TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1913.

No. 715.

THE COLUMBUS RAILWAY, POWER & LIGHT COMPANY, APPELLANT,

vs.

THE CITY OF COLUMBUS, OHIO, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF OHIO.

FILED OCTOBER 28, 1913.

(26,801)

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a Supreme Court of the United States.

THE COLUMBUS RAILWAY, POWER AND LIGHT COMPANY, Appellant,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation, et al., Appellees.

Appeal from the District Court of the United States for the Southern District of Ohio, Eastern Division.

William O. Henderson, Henry J. Booth, Henderson & Burr, and Booth, Keating, Pomerene & Boulger, Solicitors for Appellant, Columbus, Ohio.

Joseph S. Clark, Henry A. McCarthy, of Counsel for Appellant, Philadelphia, Pa.

Henry L. Scarlett, David F. Pugh, Solicitors for Appellees, Columbus, Ohio.

Joseph A. Godown, of Counsel for Appellees, Columbus, Ohio.

b At a stated term of the District Court of the United States within and for the Sixth Judicial Circuit and Eastern Division of the Southern District of Ohio, begun and held at the Court Rooms in the City of Columbus, on the first Tuesday of June, being also the fourth day of that month, in the year of our Lord One Thousand Nine Hundred and Eighteen and in the One Hundred and Forty-second year of the Independence of the United States of America.

Present: The Honorable D. C. Westenhaver, U. S. District Judge. (Sitting by Designation.)

Among the proceedings had were the following, to-wit:

In Equity.

No. 104.

THE COLUMBUS RAILWAY, POWER AND LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck, and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

Be it remembered that heretofore, to-wit, on the 20th day of August, A. D. 1918, came the Plaintiff and filed in the Clerk's Office of said Court, its certain Bill of Complaint in this cause, against said Defendants, which said Bill of Complaint is clothed in the words and figures following, to-wit:

1 In the United States District Court for the Southern District of Ohio, Eastern Division.

In Equity.

No. —.

THE COLUMBUS RALWAY, POWER AND LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck, and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

Bill of Complaint.

To the Honorable the Judges of the District Court of the United States for the Southern District of Ohio, Eastern Division:

The plaintiff, The Columbus Railway, Power and Light Company, complains and says:

1. The plaintiff is a corporation of the State of Ohio duly incorporated, organized and existing for the purpose, among others, of

acquiring by purchase *of* lease, constructing, extending, owning, main aining and operating by means of electricity, street railroads or interurban railroads, or both, in the City of Columbus, County of Franklin and State of Ohio, and lines of such railroads extending from said city, within, through and between the municipali-
2 ties loca ed in said county and in territory contiguous to said county, with such termini as are or may be designated in the several ordinances, resolutions and orders granting and establishing the same; and it owns and operates, among other things, a sys em of street railway lines in the City of Columbus, Ohio.

2. The defendant, the City of Columbus, Ohio, is a municipal corporation of the State of Ohio duly incorporated, organized and existing under the laws of said State. The defendant, George J. Karb, is the duly elected, qualified and acting Mayor of said City of Columbus. The defendant, Henry L. Scarlett, is the duly elected, qualified and acting City Attorney and City Solicitor of said city. The defendant, James J. Thomas, is the duly elected, qualified and acting City Clerk of said city. And the defendants, Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Arthur P. Lamneck, Joseph C. Nailor, Edgar L. Weinland and Fred P. Zimpfer, are the duly elected, qualified and acting members of the City Council of said city.

3. This suit is a civil suit, and the matter in controversy exceeds, exclusive of interest and costs, the sum of $3,000.

4. The plaintiff and its predecessors in title have since the enactment of the two ordinances mentioned in this paragraph and until the 20th day of August, 1918, been operating said system of street railway lines in the City of Columbus, which system consists of more than one hundred and ten (110) miles of track with necessary switches, turn outs and overhead construction, under two certain franchises granted by said city, towit:

(*a*) A franchise granted by an ordinance, entitled:

3 "An Ordinance, No. 17,801.

Renewing to The Columbus Railway Company, for a term of twenty-five (25) years, its grants, rights, privileges and franchises, to maintain and operate its tracks and lines of street railroad upon the streets and avenues, and parts of streets and avenues, hereinafter mentioned, in the City of Columbus, Ohio, and prescribing the terms and conditions thereof, and repealing the provisions of any and all ordinances and resolutions, and parts of ordinances and resolutions, inconsistent with the terms of this ordinance."

said ordinance having been duly passed by the City Council of said city on February 4, 1901, and duly approved by the Mayor of said city on February 6, 1901, and all rights and privileges thereunder having been thereafter transferred and conveyed by said The Columbus Railway Company to the plaintiff by deed dated January 29, 1914. This franchise ordinance has been sometimes called and is hereafter referred to as the Blanket Franchise Ordinance, and a copy

thereof is hereto attached, marked "Exhibit No. 1" and referred to for greater certainty.

(*b*) A second franchise granted by an ordinance entitled:

"An Ordinance, No. 17,802,

Granting permission to The Central Market Street Railway Company, its successors and assigns, to construct, operate and maintain a single or double track street railway, with necessary sidetracks, curves, turn-outs and switches in the following streets of the city of Columbus, Ohio, to-wit: Rich street, Fifth street, Donaldson street, Livingston avenue, Mohawk street, Reinhard avenue, Jaeger street, Hanford street, Fourth street, Hosack street, Innis avenue and Parsons avenue to the south corporation line of said City of Columbus."

said ordinance having been duly passed by the City Council of said city on January 21, 1901, and duly approved by the Mayor of said city on January 22, 1901, and all rights and privileges thereunder having been transferred and conveyed, after foreclosure proceedings, to the plaintiff under its former name of The Columbus Traction Company, by deed dated March 1, 1907. A copy of this second franchise ordinance, which is hereafter referred to as the Central Market Franchise Ordinance, is hereto attached, marked "Exhibit No.
4 2" and referred to for greater certainty.

In addition to said Blanket Franchise and said Central Market Franchise, certain other franchises were previously granted by said City of Columbus to predecessors in title of The Columbus Railway Company, as follows, towit:

"On Main street, (formerly called Friend street) from High street to Rose Avenue; on State street from High street to Grant avenue; thence in a northerly direction on Grant avenue to Oak street; thence on Oak street in an easterly direction to Sherman avenue, (formerly called Bruce street); on Long street from High street in an easterly direction to Mulberry street, and thence in a southerly direction on Mulberry street from Long street to Broad street; on Cleveland avenue in a northerly direction from Long street to Mt. Vernon avenue; thence in an easterly direction on Mt. Vernon avenue to Washington avenue; on West Broad street from High street to a point opposite the center of the east driveway to the Central Hospital for the Insane, (the same being the corporation line of the City of Columbus as established by ordinance of the City of Columbus, passed on or about May 18th, 1890); on Glenwood avenue in a southerly direction from Broad street to the Harrisburg pike; thence in a southwesterly direction on the Harrisburg pike to Green Lawn cemetery.

All of these last mentioned franchises were granted without limitation of time and are perpetual. They were duly and legally transferred and conveyed to said The Columbus Railway Company and by said Company conveyed to the plaintiff by the aforesaid deed

dated January 29, 1914. The streets covered by these perpetual franchises are set forth in Section 20 of said Blanket Franchise Ordinance, Exhibit No. 1, and the claim of said The Columbus Railway Company that they are perpetual is recognized by said city in said section but is not there admitted. Reference to said section which appears in Exhibit No. 1 is hereby made.

6. Under the terms and provisions of said Blanket Franchise Ordinance, Exhibit No. 1, the grantee and its successor and assigns were required in due course as therein provided to issue and sell,
5 and they did issue and sell, eight tickets for twenty-five cents, and to give, and they did give, universal free transfers thereon. The issue and sale of these tickets with universal free transfers was instituted April 1, 1912, and continued until August 20th, 1918, when said franchise was surrendered and cancelled by the plaintiff as hereinafter stated.

7. Under said Central Market Franchise ordinance, Exhibit No. 2, that company issued and sold eight tickets for twenty-five cents and gave universal free transfers, and continued to do this so long as it remained the owner of said franchise; and the plaintiff has continued the issuing and selling of eight tickets for twenty-five cents and giving such transfers ever since it became the owner of said franchise until August 20th, 1918, when said franchise was surrendered and cancelled by plaintiff as hereinafter stated.

8. The plaintiff in the operation of said system of street railway lines has developed and is conducting an extensive business in the carrying of street railway passengers in said city; and, during the year 1917, averaged 224,162 car rides per day, and during said year carried on its said lines in said city a total of 81,819,395 passengers, for which it received the sum of two and six tenths (2 6-10) cents per car ride and no more. A person riding upon a transfer is counted as a passenger in the above figures.

9. The plaintiff has now invested in said street railway lines and its equipment, on a conservative basis of investment and physical value, more than twelve millions of dollars. The plaintiff and its
6 predecessors in title have from time to time issued and sold, and there are now outstanding in the hands of bona fide holders for value, mortgage bonds in large amounts, of which the sum of $7,295,000, at least, are chargeable against its street railway property, the annual interest charge upon which is more than $333,000.

10. The plaintiff since it became the owner and operator of said system of street railway lines in the year 1914, has operated and managed, and is now operating and managing, said system efficiently, economically, conservatively, intelligently, safely and at the lowest possible cost consistent with adequate and sufficient service to the public. Notwithstanding such operation and management, the results have shown increased and increasing costs of operation and decreased and decreasing net revenue.

The cost of coal necessary to generate the power required to operate said street railway lines has shown a marked increase. The plaintiff paid for coal for this purpose, in the year 1915, the sum of

$60,164; in the year 1916, the sum of $81,354; and, in the year 1917, the sum of $234,838. The plaintiff has also been obliged to increase materially the wages paid to its employes. In the year 1916, it paid in wages to its railway employes the sum of $806,336, and, in 1917, the sum of $887,984.

The net earnings derived from the operation of said street railway lines for the twelve months ending June 30, 1918, after deducting operating expenses, taxes and a proper charge for depreciation, were $301,987, an amount insufficient by more than $31,000, to pay the interest on said $7,295,000, of bonds outstanding properly chargeable against plaintiff's street railway property, and barely
7 enough to pay two and one-half (2½) per cent upon the value of the property employed by plaintiff in furnishing street railway service to the people of Columbus.

11. During the month of June, 1918, street railway employes of plaintiff demanded a further increase in their wages. After some negotiations, the controversy was referred to the National War Labor Board for decision, and that Board, on July 31, 1918, rendered its decision, the result of which is that plaintiff must increase the wages of its street railway employes more than fifty per cent. This increase in the wage account will increase the operating expenses of the street railway lines of plaintiff about $560,000 per year. Plaintiff therefore says that as the result of its said operations for the current year ending June 30, 1919, its gross earnings therefrom will fall short of paying its operating expenses, depreciation and taxes by approximately $250,000., and that there will be no earnings whatever with which to pay its said interest charges or to yield any return to plaintiff upon the value of its property employed in furnishing street railway service to the people of the City of Columbus.

12. On the 20th day of August, 1918, plaintiff surrendered and cancelled both said Blanket Franchise and said Central Market Franchise by notification in writing addressed to the City of Columbus, Ohio, the Mayor, City Council and City Clerk of said City. A copy of this written notice is hereto attached marked "Exhibit No. 3" and referred to for greater certainty. Plaintiff asks that the facts set forth in such written notification be considered as part of
8 this bill of complaint with the same force and effect as if repeated in full herein.

13. The plaintiff charges that the rates of fare prescribed by the terms and conditions of said two franchises last above mentioned were not either before or when said franchise were surrendered and cancelled as hereinbefore stated, and would not be if longer enforced against the plaintiff, sufficient to enable it to maintain its street railway property in good order and repair and to perform its duty as a public utility; and that the enforcement of said rates of fare would violate the Fourteenth Amendment to the Constitution of the United States, in that said rates of fare are inadequate and confiscatory, and their enforcement would deprive the plaintiff of its property without due process of law. The plaintiff further charges, that by reason of the facts herein stated and by reason of the nature and character

of said two franchises, it was fully warranted and justified in surrendering and cancelling them.

14. The plaintiff further charges that the defendants threaten, and will, unless restrained and enjoined by this court, attempt, to force it to continue to operate its street railway lines under said Blanket Franchise and said Central Market Franchise upon all of the streets of said city, including those streets covered by the aforesaid perpetual franchises, and to force it to continue to issue and sell eight tickets for twenty-five cents and give universal free transfers; and that said threat of the defendants, if carried out, would compel the plaintiff to carry passengers upon its said lines at inadequate and confiscatory rates, in violation of said Fourteenth Amendment to the Constitution of the United States.

15. In anticipation of a controversy between said city on
9 the one side and the plaintiff on the other over the right of the plaintiff to surrender and cancel the aforesaid two franchises and its right to put into force and effect its new rates of fare, the details of which are set forth in Exhibit No. 3, of this bill of complaint, the plaintiff is giving and will continue to give to its passengers paying the new rates of fare appropriate rebate checks representing the difference between the new rates of fare and those prescribed by the aforesaid two ordinances, and it will redeem said rebate checks provided it shall be finally decided that the plaintiff was not justified in adopting said new rates of fare.

16. The plaintiff further says that the enforcement by the defendants or any of them of the aforesaid two franchise ordinances, or either of them, or an attempt by them to enforce the same, would cause the plaintiff immediate and irreparable injury, loss and damage; and that it has no adequate remedy at law in the premises.

17. The plaintiff further says that this bill of complaint presents a case within the jurisdiction of this court of equity in view of the controversies, confusion, risks and multiplicity of suits which would necessarily be occasioned by the resistance of the plaintiff to the enforcement of the inadequate and confiscatory rates of fare prescribed in the aforesaid two franchise ordinances, and that, in view of the public interests and the great number of people to be affected, thereby, only a court of equity is competent to meet such an emergency and to determine once and for all and without a multiplicity of suits matters that affect not only individual persons, but also the interests
of the entire community in the use of the public streets of
10 the City of Columbus and in the administration of the affairs of the plaintiff, a quasi-public corporation, operating lines of street railway in said streets.

Wherefore, the plaintiff prays:

First, That the defendants and each of them make full direct and true answer to the matters, all and singular, herein stated and complained of, but not under oath, this being hereby waived.

Second, That the defendants and each of them, their officers, servants, employes and agents, and their respective successors in office, be temporarily restrained and enjoined pending this suit, and on final hearing, be forever enjoined from in anyway forcing

or compelling the plaintiff or attempting to do so, to operate its lines of street railway, or any of them, in the City of Columbus, under said Blanket Franchise ordinance or under said Central Market Franchise ordinance; from in any way forcing or compelling the plaintiff, or attempting to do so, to charge and collect only the rates of fare prescribed by the aforesaid two franchise ordinances for carrying passengers upon its lines of street railway in said city; from in any way enforcing against the plaintiff, or attempting to do so, the aforesaid two franchise ordinances, or either of them, or any provision of either of them; from in any way interfering with the operation by the plaintiff of its lines of street railway on those streets in said city which are covered by the aforesaid perpetual franchises, said streets being the following, towit:

"On Main street, (formerly called Friend street) from High street to Rose avenue; on State street from High street to Grant avenue; thence in a northerly direction on Grant avenue to Oak street; thence on Oak street in an easterly direction to Sherman avenue, (formerly called Bruce street); on Long street from High street in an easterly direction to Mulberry street, and thence in a
11 southerly direction on Mulberry street from Long street to Broad street; on Cleveland avenue in a northerly direction from Long street to Mt. Vernon avenue; thence in an easterly direction on Mt. Vernon avenue to Washington avenue; on West Broad street from High street to a point opposite the center of the east driveway to the Central Hospital for the Insane, (the same being the corporation line of the City of Columbus as established by ordinance of the City of Columbus, passed on or about May 18th, 1890); on Glenwood avenue in a southerly direction from Broad street to the Harrisburg pike; thence in a southwesterly direction on the Harrisburg pike to Green Lawn cemetery;

and from in anyway interfering with the plaintiff in its possession, control, management or operation of its said street railway property, or attempting to do so.

Third. That the plaintiff may have all such other and further relief as to equity may seem meet and the nature of the case may require.

WILLIAM O. HENDERSON,
HENRY J. BOOTH,
HENDERSON & BURR, AND
BOOTH, KEATING, POMERENE & BOULGER,

Solicitors for Plaintiff,
The Columbus Railway, Power and Light Company.

JOSEPH S. CLARK,
HENRY A. McCARTHY,
Of Counsel.

STATE OF OHIO,
Franklin County, ss:

Samuel G. McMeen, being first duly sworn, deposes and says that he is the President of the above named plaintiff, The Columbus Railway, Power & Light Company, which is a corporation and is familiar with its business; that he has read the foregoing bill of complaint and knows the contents thereof; and that the facts stated and allegations contained in said bill of complaint are true.

SAMUEL G. McMEEN.

Sworn to before me and subscribed in my presence by the said Samuel G. McMeen this 20th day of August A. D. 1918.

SHERMAN B. RAMDALL. [SEAL.]
Notary Public in and for Franklin County, Ohio.

12 EXHIBIT No. 1.

An Ordinance, No. 17801.

Renewing to The Columbus Railway Company, for a term of twenty-five (25) years, its grants, rights, privileges and franchises, to maintain and operate its tracks and lines of street railroad upon the streets and avenues, and parts of streets and avenues, hereinafter mentioned, in the City of Columbus, Ohio, and prescribing the terms and conditions thereof, and repealing the provisions of any and all ordinances and resolutions, and parts of ordinances and resolutions, inconsistent with the terms of this ordinance.

(City Record Book 11, Page 524.)

Preamble.

Whereas, The Columbus Railway Company is the owner of and now engaged in operating certain lines of street railroad in the City of Columbus, Ohio, being the lines heretofore owned and operated by it, as well as those purchased from The Columbus Central Railway Company, and being the same lines enumerated in the title hereof; and

Whereas, Said several lines of street railroad owned by said The Columbus Railway Company, are held and operated by it under the authority of ordinances passed at various times, and for various terms, and containing various and inconsistent conditions as to the operation of lines of street railroad thereunder, and so limiting the franchises thereunder granted that they expire at different dates up to and including the year 1917; and

Whereas, In order to improve the service rendered by the said The Columbus Railway Company, it is desired that the several lines of street railroad now operated under separate and different franchise ordinances, may be operated by said company as one complete

and entire system, thereby better accommodating the public and facilitating the running of the cars of said company; and

13 Whereas, It is desired that the franchise rights of said The Columbus Railway Company to maintain and operate its tracks and lines of street railroad upon each and all of said several streets and avenues shall be made to expire at one and the same date; and

Whereas, It is desired that the burden to be borne by said The Columbus Railway Company in the way of payment of cost of street cleaning, sprinkling, paving and repairs upon the several streets and avenues occupied by its lines, shall be uniform; and

Whereas, The provisions of the existing ordinances under which the said The Columbus Railway Company claims the right to maintain and operate its lines of street railway upon the several street- and avenues, prescribe different and varying rates of fare, and it is desired that there shall be uniformity in, and a reduction of, the rates of fare, and a general system of transfers, applicable to each and every part of the system of street railroads owned and operated by said The Columbus Railway Company; and,

Whereas, A renewal of the grants, rights, privileges and franchises of said The Columbus Railway Company, on the streets and avenues herein and hereinafter named, for said term of twenty five years, upon the conditions hereinafter prescribed in this ordinance, will be conducive to the public interests; now therefore,

Be it Ordained by the City Council of the City of Columbus, Ohio, as follows, to-wit:

Routes.

14 Section 1. That the franchises, rights and privileges of The Columbus Railway Company to maintain and operate its tracks and lines of street railroad, with all necessary switches, connections, turn-outs and other appliances suitable and proper for its use, together with the franchise, right and privilege to operate street railroad cars thereon, on the following streets and avenues, and parts of streets and avenues, in the City of Columbus, Ohio, viz:

On High street from the south corporation line of the City of Columbus to its north corporation line, including the loop at Olentangy park; on Chittenden avenue in an easterly direction, from High street to The Cleveland, Cincinnati, Chicago and St. Louis Railway Company's tracks, and alongside said tracks in a southerly direction, forming what is known as the Fair Ground loop; on Goodale street in an easterly direction, from High street to Fourth street; on Chestnut street in an easterly direction from High street to Fourth street; thence on Fourth street in a northerly direction to Naghten street; thence on Naghten street in an easterly direction to Neil street; thence on Neil street in a northerly direction to Mt. Vernon avenue; thence on Mt. Vernon avenue in an easterly direction to Cleveland avenue; thence on Cleveland avenue in a northerly direction to Buckingham street; thence on Buckingham street in an easterly direction to Jefferson avenue; thence on Jefferson avenue

in a northerly direction to Leonard avenue; thence on Leonard avenue in an easterly and northeasterly direction to the north corporation line of the City of Columbus; on Mt. Vernon avenue in an easterly direction from Washington avenue to Taylor avenue; thence on Taylor avenue in a northerly direction to Atcheson street; thence on Atcheson street in an easterly direction for a distance of two hundred (200) feet; on Livingston avenue in an easterly direction, from High street to Kelton avenue, including the loop into the Driving park as now built; on Schiller street in an easterly direction, from High street to Parsons avenue; on West Goodale street in a westerly direction, from High street to Neil avenue; thence on Neil avenue in a northerly direction to Eleventh avenue; on Fourth street, from Livingston avenue, in a northerly direction to Wyandotte avenue; on Kelton avenue, from Main street, in a southerly direction to Livingston avenue; on Rose avenue, from Main street, in a northerly direction to Fair avenue; on Sandusky street, in a southerly direction from Broad street to Sullivant avenue; thence on Sullivant avenue, in a westerly direction, from Sandusky street to Glenwood avenue; on West Broad street, from a point opposite the center of the east driveway of the Central Hospital for the Insane (the same being the corporation line of the City of Columbus as established by an ordinance of the City of Columbus, passed on or about May 18th, 1890) to Hague avenue; on Main street in an easterly direction, from Rose avenue to Alum creek; on Oak street in an easterly direction, from Sherman avenue (formerly called Bruse street) to Fairwood avenue; on Cleveland avenue, from Buckingham street northerly to the north corporation — of said City of Columbus; on Neil street from Naghten street in a southerly direction to Spring street; thence on Spring street in a westerly direction to Front street; thence on Front street in a northerly direction to and over the Front street bridge across the railroad tracks; thence along Park street to Spruce street; thence westerly on Spruce street from Park street to Dennison avenue; thence on Dennison avenue southerly to Montgomery street; thence westerly on Montgomery street to Harrison avenue; thence on Harrison avenue, northerly, from Montgomery street to First avenue; thence on First avenue westerly, from Harrison avenue to Pennsylvania avenue; thence on Pennsylvania avenue in a northerly direction from First avenue to Fifth avenue; on Front street in a southerly direction, from Spring street to Fulton street; thence on Fulton street in an easterly direction to Parsons avenue; thence on Parsons avenue in a southerly direction to the south corporation line; on Town street from High street in a westerly direction to Front street; be and the same are hereby renewed to said The Columbus Railway Company, its successors and assigns, for and during the term of twenty-five years, from and after the passage of this ordinance; and the said The Columbus Railway Company is, and its successors and assigns are, hereby granted the franchise and right, and are hereby authorized and empowered to maintain and operate its lines of street railroad upon and over each and all of said streets and avenues, and parts of streets and avenues, aforesaid, for

said period of twenty-five years, from and after the passage of this ordinance, upon and subject to each and every of the terms, conditions, stipulations and requirements hereinafter prescribed, and subject to the requirements of the general ordinances of the City of Columbus, Ohio.

To Connect Tracks.

Sec. 2. The said The Columbus Railway Company shall connect its tracks on High street with the tracks of what was formerly known as The Columbus Central Railway, at the intersection of High street and Spring street, at the intersection of High street
17 and Town street, and at the intersection of High street and Fulton street, so that said lines may be operated as one system, in order to better accommodate the public; and said company shall have the right to connect, by suitable curves, tracks and appliances, its tracks at any point where they now intersect, or may hereafter intersect, at any time while this ordinance remains in force, under the direction and supervision, and according to plans and specifications to be approved by the Board of Public Works; and may maintain feed wire lines on any streets or avenues where they are now located, and elsewhere when needed, under like direction and supervision, and under plans to be approved by said board.

Provided, further, that said railroad company, in operating its lines of cars, shall make no change in the routes as now operated by it unless such change shall be first approved by resolution of the City Council of said city.

Street Repairs and Improvements.

Sec. 3. The said The Columbus Railway Company, shall keep in repair all that portion of said streets and avenues included within lines drawn one foot on the outside of the outer rails of its tracks; and shall pay for the cleaning, sweeping and sprinkling of said portion of the public way occupied by it and one foot on the outside of its outer rails, at the same rate and in the same manner required of abutting property owners for the residue of the public ways adjacent to said strip. If the City Council at any time orders the improvement of the roadway of any of said streets and avenues, by laying down thereon a pavement of any kind, said company shall, at its own expense, improve that portion occupied by its tracks and one foot on the outside thereof, with the same character of ma-
18 terials; or, if on the said streets or avenues a pavement has already been laid, and an assessment therefor placed on the tax duplicate, said company shall pay to the Director of Accounts of the City of Columbus, Ohio, such portion of the assessment for said improvement as the space occupied by said tracks and one foot on the outside of the outer rails bears to the entire width of the improved roadway; such sum to be by the Director of Accounts paid to the City Treasurer, and by him to be credited to any portion of the assessment made for the cost of such improvement, remaining

due from, and unpaid by, the several abutting property owners; provided, that if in any case the amount so paid shall exceed the unpaid assessments, the excess shall be by the Director of Accounts paid to the abutting property owner entitled thereto.

Pavements.

Sec. 4. The pavements provided for in this ordinance shall be laid at such height or grade as may be fixed or determined by the Board of Public Works, and shall, during the existence of this ordinance or grant, or any extension, amendment or renewal thereof, be kept in repair under the direction and supervision of such officers as may be from time to time vested by law or ordinance of the City Council with the control and supervision of the Public Highways and Works of said city; and on the failure of the company to make said repairs within thirty (30) days after receiving notice so to do from the City Council, the City Council may make the same or cause the same to be done, and said City of Columbus shall collect all the cost and expense thereof from said company, and the entire amount of such cost and expense shall constitute a lien and charge upon the property and franchise of said company the same as if formally levied and assessed as in the case of other municipal improvements. Whenever the said railroad is bring put down on any unimproved street or streets, said company shall grade the street or streets from curb to curb at its own expense on a level with its tracks.

Damage Indemnity.

Sec. 5. Said Railway Company shall, at all times hereafter, defend, indemnify and keep harmless the City of Columbus from any and all damages, lawful claims and demands for injuries to persons or property, the cost and expense of which said city may be subjected to or made liable for, by any proceedings at law or in equity, or otherwise, growing out of the grant of the privileges in this ordinance granted or out of the exercise or enjoyment of the same by said company, or out of the failure of said company to construct and keep in repair the pavement or other improvement by it herein required, or authorized, to be constructed and maintained; and said company may, at its own cost, defend against such actions, either in its own name or in the name of the City of Columbus.

Temporary Track Removals by City.

Sec. 6. The said City of Columbus shall have the right to temporarily remove or obstruct, or authorize the same to be done, any portion of the railroad tracks of said company, whenever and wherever it shall be necessary in laying down or repairing water pipes, gas pipes, sewers, drains, gutters or cisterns, or to use hose or any other apparatus necessary to be used in extinguishing fires, or any other public work or improvement required to be done

by said city, not disturbing the running of cars where it can be avoided, without incurring any liability for damage to said company.

Speed and Control of Cars.

Sec. 7. Said company shall at all times conform to such reasonable rules and regulations as are, or may hereafter be prescribed by ordinance, as to the rate of speed it may run its cars; and when its cars are about to start, and when in motion, if reasonable cause therefor exist, warning shall be given by gong or otherwise, to notify persons of immediate or approaching danger? No car shall be started or put in motion while any passenger is in the act of entering the same or alighting therefrom. Cars running in the same direction shall not approach nearer to each other than one hundred feet, unless from unavoidable necessity or on switches or turnouts. Gongs shall be sounded as a warning on all cars approaching each other from opposite directions, and on each car approaching street intersections, which the car is to pass from one street to another, where there are buildings to prevent persons on foot or persons in other vehicles on the street from seeing the approaching car; the warning last aforesaid to be given at a distance of not less then fifty feet from such street corner and from time to time until the car reaches such intersection.

21 Sewer and Water Pipes.

Sec. 8. The said City of Columbus shall not be liable in any way to said company for damages it may sustain from the breaking, or overflow of water from, any sewer or drain, or from the breaking of any water pipe or gas pipe by reason of any change in the grade of said streets; and said company shall so construct its tracks as to fully protect from damage thereby any and all sewers, water pipes and mains, gas or other pipes running beneath the surface of the streets.

Snow and Ice.

Sec. 9. In case it becomes necessary for said company to remove snow and ice from its tracks on said streets, it shall not be left in such manner as to interfere with or impede travel or render the street dangerous.

Conductors and Motormen—Exercise of Caution.

Sec. 10. The conductors in charge of cars shall not allow any lady or child to enter or leave any car while in motion; and the conductors and motormen shall keep a vigilant watch for all teams, carriages, persons and obstructions upon or near the track, and upon first appearance of danger, shall give warning and stop the car if necessary, to prevent accident; and the motormen must always be on the front platform while the car is in motion.

Motive Power and Safe Equipment.

Sec. 11. Permission is hereby given said company to operate its entire lines of street railroad with any and all extensions that
22 may hereafter be made thereto, by electricity, or such other motive power, other than animal or steam power, as shall be acceptable to the city. Said company shall have the right to erect and maintain iron or wood poles, painted and neat in appearance, wires, fixtures and conduits, and any and all other appliances or appurtenances that in the opinion of the city shall be found necessary. At and after dark all cars running shall be lighted and provided with suitable signal lights. All cars shall be kept clean, and when the temperature is below 35 degrees Fahrenheit, shall be heated. No car shall be allowed to remain standing upon the line of any route for passengers or any other purpose so as to impede any other vehicle, but shall be subject to such police regulations as are or may be prescribed for any other vehicles so far as they may be applicable. No car or cars shall be used on such railroad if worn out, broken, or so constructed, or kept in such a condition as to imperil the lives, limbs or health of the passengers; provided, that if any time during the life of this grant or any extension thereof, said city shall require, by ordinance, all trolley wires or other electric wires in the principal business district of said city to be placed in conduits under ground, said company shall within a reasonable time after the passage of such ordinance, which time shall be fixed by said city, place all its trolley wires, and feed wires within said district, under ground.

Wires and Poles.

Sec. 12. In the erection or placing of wires or conduits and in the use of any and all other appliances and appurtenances found necessary to operate said company's lines of railroad, a plan of the same, showing all poles, wires and other appliances or appurtenances
23 that said company shall, desire to use, shall be submitted to and approved by the Board of Public Works. Said city shall have the right to fix the height of all wires and poles above the street, and the size and location of all poles and conduits in the street, to determine the places in the streets where any and all tracks, appliances and appurtenances shall be located, and to establish such regulations with reference to the Public Safety and protection as the city shall from time to time deem necessary and proper.

Interurban Lines.

Sec. 13. The said city hereby reserves the full right and power at any time during the life of the grant herein made to grant to any other company, corporation or individual, engaged in operating an interurban railroad to jointly use with said The Columbus Railway Company any track or part hereof owned or operated by said

The Columbus Railway Company, which may be necessary to enable the cars operated on such interurban railroad to pass by the most direct route to and from High street, if said cars shall enter said city west of High street, and to and from High street if said cars shall enter said city east of said High street, and to and from Chestnut street, if said cars shall enter said city north of Chestnut street and to and from Town street, if said cars shall enter said city south of Town street, upon equitable terms of payment therefor to said The Columbus Railway Company, taking into consideration the value, cost of construction and maintenance of
24 the track or tracks and over head construction so jointly used, the amount paid by said The Columbus Railway Company, its predecessors, successors and assigns, whether to said city or to abutting property owners, for street paving and the cost of maintaining the same upon such street or streets so occupied, the pro rata amount of taxes and assessments paid on such track or part thereof, and the cost of power used in operating such interurban cars. If such right to joint use be granted by said city and if terms of compensation therefor cannot be agreed upon by said The Columbus Railway Company and the corporation, company or individual applying for such joint use, within sixty days after such grant is made by said city, the terms of compensation therefor shall be submitted to arbitration, one arbitrator to be chosen by said The Columbus Railway Company, one by the corporation, company or individual applying for such joint use, these two to select a third arbitrator. The decision of said arbitrators, in the absence of fraud, accident or mistake of law or fact, shall be conclusive on both parties. But neither such arbitration nor any appeal therefrom shall in any way delay such joint use and occupation, when so granted as aforesaid, provided such grantee of the right to such joint use shall first secure to the satisfaction and acceptance of said The Columbus Railway Company the payment of the compensation which may be awarded by said arbitrators. No interurban cars shall be operated over any track or tracks, or parts thereof of said The Columbus Railway Company under and by virtue of the foregoing provision of this ordinance authorizing said city to compel such joint use, more frequently than one car each way every thirty minutes. Said The Columbus Railway Company is hereby authorized and empowered to make and carry out contracts or traffic arrangements, for
25 the use of any of its tracks or any part thereof, by interurban cars of a guage different from that of its own cars, and, with the consent of said city to permit the laying and the use of a third rail for said purpose; but it shall not permit such joint use or the laying of such third rail except over such route as may be necessary to enable such interurban cars to reach, and return from, the tracks now known as the interurban loop as now existing or hereafter modified. It is intended and understood that the phrases "interurban cars" and "cars operated on such interurban railroads" refer to and mean only such cars as shall be operated at regular intervals between said City of Columbus and some other city, or some village, at least ten miles distant from the limits of said City of Columbus, where such interurban cars enter the same. Any grant or traffic

arrangement made by said The Columbus Railroad Company to any other corporation, company or individual, to use any o. its tracks or any part thereof, shall be subject to all rules and regulations of said city now in force, and all reasonable rules and regulations which may hereafter be adopted by said city, concerning the rate of speed and headway, and the operation, character, lighting and heating of all cars so operated under such grant or traffic arrangement for such joint use, and for the comfort and safety of passengers carried thereon.

Interurban Passenger and Freight Cars.

Sec. 14. Neither said The Columbus Railway Company nor any other person, company or corporation which may hereafter obtain the right to use any of its track or tracks, shall move along
26 or over the same any passenger cars in trains of more than three cars per train, including the motor car.

Freight cars shall not be moved along or over the whole or any part of the tracks of the said The Columbus Railway Company in said city, except upon the streets and avenues or parts of streets and avenues hereafter designated by ordinances which may hereafter be passed by the City Council of said city granting such permission: provided, however, that said company may transport over any of its lines, material to be used by it in construction of repairs and extensions.

Conductors and Motormen—Duties.

Sec. 15. At all times when any car is in use a motorman in charge of such car shall be stationed on the front platform of the motor car; and there shall be a conductor on each car, whose duty it shall be to collect fares and to look out for the safety and comfort of passengers.

Electrolysis.

Sec. 16. In the construction of its trolley wires, said company shall safeguard the water pipes, and any other system of iron pipes which may be maintained by said city, by using what is known as the "double trolley system," or such other device, to be approved by the Board of Public Works, as shall effectually protect such pipes from injury by electrolysis.

To Expend a Million Dollars.

Sec. 17. Said company shall, as rapidly as the requirements of its railroad system and the efficient service of the public de-
27 mands, during the life of this grant, expend*ed* not less than $1,000,000.00 in extensions and betterments, and shall, at all times during the life of this franchise, furnish, upon all its lines, efficient and adequate service and a sufficient number of first class, commodious cars for the accommodation of its patrons. The City

Council of said city may, by ordinance, require such reasonable extensions of such of the lines operated by said company as may be necessary for the efficient operation of such railroad and for the convenience of the public, whenever along the line of any such proposed extension and between parallel lines four hundred feet distant on each side thereof, there shall be when such extension is ordered, not less than one hundred and fifty separate buildings, used and occupied as dwellings, per mile or in like proportion for any less distance; but said company shall not be required to construct more than one mile of extensions within one calendar year.

It is expressly provided that any and all franchise rights to operate extensions which may hereafter be granted to said company, shall expire at the expiration of said period of twenty-five years.

Grooved Rails and Kind of Pavement.

Sec. 18. In making extensions on paved streets, and in relaying tracks on paved streets, grooved or other modern and improved rails of weight and pattern to be approved by the Board of Public Works of said city shall be laid; such rails shall be laid upon foundations of concrete or other material, and according to plans to be approved by said board.

28 Whenever any unpaved street, or any part of any street, along which said company operates lines of street railroad, shall hereafter be improved by laying down thereon a pavement, said company shall relay its tracks thereon in the manner aforesaid, and shall pave the portion of such street as provided in sections 4 and 5 of this ordinance.

Cash Deposits for City Repairs.

Sec. 19. Said company shall keep on deposit with the said city at all times the sum of one t-ou*n*sand dollars as an emergency fund, against which the city may draw, upon vouchers drawn by the Director of Accounts, with the approval of the Board of Public Works, for the cost and expense of any repairs made by said city, which, by the terms of this ordinance, should have been made by said company, and which said company after due notice and reasonable opportunity has failed or neglected to make within the time prescribed by this ordinance; and said company shall at once replace any portion of said fund, expended as aforesaid so as to keep on deposit at all times the amount of one thousand dollars; and at the expiration of the time granted by this ordinance any sum remaining in said fund due to said company shall be refunded.

Perpetual Franchises.

Sec. 20. The grants and provisions hereinbefore made and contained for thr renewal of the franchise of the said The Columbus Railway Company on the streets and avenues hereinbefore mentioned in section 1 of this ordinance, shall in all respects apply to the grants,

rights, privileges and franchises of the predecessors in title of said The Columbus Railway Company, to construct, maintain
29 and operate lines of street railway on Main Street, (formerly called Friend Street) from High street to Rose avenue; on State street from High street to Grant avenue; thence in a northerly direction on Grant avenue to Oak street; thence on Oak street in an easterly direction to Sherman avenue, (formerly called Bruce street); on Long street from High street in an easterly direction to Mulberry street, and thence in a southerly direction on Mulberry street from Long street to Broad street; on Cleveland avenue in a northerly direction from Long street to Mt. Vernon avenue; thence in an easterly direction on Mt. Vernon avenue to Washington avenue; on West Broad street from High street to a point opposite the center of the east driveway to the Central Hospital for the Insane, (the same being the corporation line of the City of Columbus as established by ordinance of the City of Columbus, passed on or about May 18th, 1890); on Glenwood avenue in a southerly direction from Broad street to the Harrisburg pike; thence in a southwesterly direction on the Harrisburg pike to Green Lawn cemetery; as fully as if the routes and streets and avenues mentioned in this section were specifically mentioned and included in the first section of this ordinance, if, and so far as, the franchises in the streets and avenues mentioned, in this section or either of them or any part thereof shall hereafter be judicially declared by a court of competent jurisdiction, or by any appellate court to which any suit brought to test any or all of said franchises shall be brought, may be carried by proceedings in error or on appeal, not to be franchises in perpetuity.

It is expressly provided that nothing contained in this
30 ordinance is intended, nor shall anything herein be construed to be, a concession by said City of Columbus of the validity of any claim of said company to perpetual franchises to operate lines of street railroad in all or any of the streets and parts of streets named in this section.

It is further expressly provided, that nothing contained in this ordinance shall be pleaded or considered to be a bar to any suit or suits which may hereafter be brought in any court or courts of competent jurisdiction, seeking to test the validity of any claim or claims to said company to perpetual franchises to operate any line or lines of street railroad upon any of the streets or parts of streets mentioned in this section.

Fares and Transfers.

Sec. 21. Said The Columbus Railway Company, its successors and assigns, shall be entitled to charge fares within the corporate limits of said city during the term herein provided at the following rates, and no more, to-wit: For a single cash fare, 5 cents; for tickets in packages of seven twenty-five cents, until the annual gross receipts from all fares received on all lines operated by said company within said city amount in the aggregate to the sum of one million seven hundred and fifty thousand dollars ($1,750,000.00) and after said

annual receipts amount to said sum, for tickets in packages of eight, twenty-five cents, all of which tickets shall be good for use from the time the regular cars start in the morning until the regular cars quit running at or shortly after midnight; for single fares between the hours when regular cars quit running at or shortly after
31 midnight until such cars commence running in the morning, during the first five years of the term granted by this ordinance, ten (10) cents, and thereafter five (5) cents.

No charge shall be made for children under six years of age attended by parent or other person. Children over six years of age and under ten years of age shall be carried for 3 cents each.

Tickets for the rates required by this ordinance shall be kept on sale and sold at the principal office of said company in the City of Columbus during business hours and at all times by conductors on the regular cars of said company at the rates for tickets aforesaid. For each cash fare and for each ticket said company shall, on demand of the passenger tendering the same, issue to such passenger a transfer slip good for one continuous passage in said city on any other line of street railroad owned or operated by said company which connects with, diverges from, or crosses, the line on which said transfer was issued, if presented within fifteen minutes after the time designated by punch marks on transfer slip, which time so designated shall be a reasonable arriving time of car at any one of the transfer points of the line by which such transfer was issued.

For each five cent cash fare said company shall, on demand of the passenger tendering the same, issue to such passenger a transfer slip good for one continuous passage over any other line of electric railway now constructed or hereafter constructed or operated in said city by any person, company or corporation, other than The Columbus Railway Company, whose charge for transfer slips is not less than that of said The Columbus Railway Company, and whose line of railroad connects with, diverges from, or crosses any line
32 of road of said The Columbus Railway Company; provided, that the company, corporation or person operating such other line as aforesaid shall be required by said city to accept said transfer slips for such passage, and to exchange transfers with said The Columbus Railway Company; and said The Columbus Railway Company shall be required to accept, from all passengers transferred from such lines of other roads, similar transfer slips good for continuous passage over its lines in said city, if presented in the time above provided; and the receipts from the passengers purchasing such transfer slips, so issued as aforesaid by said The Columbus Railway Company, and by any other person, company or corporation, operating lines which cross the same or connect therewith, shall be equally divided between the operators of said lines of railroad respectively.

No free transportation shall be furnished except to officers and employes of the said railroad company, and, when permitted by law, to policemen and firemen of said city wearing their official uniform.

All Night Cars.

Sec. 22. Between the hours of 5:30 a. m. and 12 o'clock midnight cars shall be run at intervals not to exceed the following, viz: High street, between north and south corporation lines, 10 minutes; Schiller street and High street, to north corporation line, 10 minutes; Long street, 6 minutes; Main and Neil avenue, 6 minutes; State and Oak streets, 7 minutes; Livingston avenue and Fourth street, 10 minutes; Leonard avenue and Camp Chase, 11 minutes; Mt. Vernon avenue and cemetery, 11 minutes; Central market line, 15 minutes; Pennsylvania and Parsons avenue, 10 minutes. Be-
33 tween the hours of 12 o'clock midnight and 5:30 o'clock a. m., cars shall be run, starting at 1 o'clock a. m., and continuing until 5 o'clock a. m., hourly upon high street, West Broad street, and on two lines to be hereafter designated by said city, running easterly from High street.

Expiration.

Sec. 23. Upon the expiration of the term of the renewal franchise herein granted said company shall, unless a further renewal be granted by said city, remove all its tracks, wires and other appliances from the streets and avenues of said city and leave the portion of each and every street occupied by its lines in good condition, corresponding in finish and material with the remainder of such streets and avenues.

Sec. 24. The terms "the city" and "said city" whenever used in this ordinance, unless the context clearly indicates a different intention, are intended and shall be construed to mean The City of Columbus, Ohio; and the terms "the company" and "said company" and "The Columbus Railway Company" whenever used in this ordinance, unless the context clearly indicates a different intention, are intended and shall be construed to mean The Columbus Railway Company, its successors and assigns.

Sec. 25. If at any time in the future the laws of Ohio shall be so amended as to do away with the Board of Public Works as now constituted by law, then and in that event the powers and duties herein conferred upon and required of the Board of Public Works shall be performed by such city officer or board as shall, by law, be entrusted with the *the* duties and powers now performed by such board.
34 If in the future the laws shall be so amended as to do away with the Director of Accounts of said city as now constituted by law, then the powers and duties conferred upon the Director of Accounts under this ordinance shall be exercised by such officer of the city as shall by law succeed to his powers and duties.

Repeal and When in Effect.

Sec. 26. The provisions of any and all ordinances and resolutions, and parts of ordinances and resolutions, heretofore passed or

adopted by the City Council of said city, which are inconsistent with the terms of this ordinance, are hereby repealed and rescinded.

Sec. 27. This ordinance shall take effect and be in force from and after its passage and legal publication, and the filing by said The Columbus Railway Company, with the City Clerk of said city, of its acceptance in writing of each and all of the terms, provisions and requirements of this ordinance; provided, however, that if said company shall fail to file such written acceptance within thirty days after the passage of this ordinance, then this ordinance shall be void and of no force and effect, but if said company shall be prevented from accepting the terms, provisions and requirements of this ordinance by injunction or other judicial or legal process, or if its acceptance thereof shall be delayed or postponed in the manner or by the means aforesaid, said Company may accept the terms, provisions and requirements of said ordinance at any time within thirty days after the expiration of the period during which said acceptance
35 shall have been prevented or delayed as aforesaid, in which event said acceptance shall have the same effect as if the same had been filed within thirty days after the passage of this ordinance.

Passed, February 4, 1901.

JAMES J. THOMAS,
President of the City Council.

Approved by the Mayor, February 6, 1901.

Attest:
JOHN T. BARR,
City Clerk.

36 EXHIBIT No. 2.

An Ordinance, No. 17802.

Granting Permission to The Central Market Street Railway Company, Its Successors and Assigns, to Construct, Operate and Maintain a Single or Double Track Street Railway, with Necessary Sidetracks, Curves, Turn-outs and Switches in the following Streets of the City of Columbus, Ohio, towit: Rich Street, Fifth Street, Donaldson Street, Livingston Avenue, Mohawk Street, Reinhard Avenue, Jaeger Street, Hanford Street, Fourth Street, Hosack Street, Innis Avenue and Parsons Avenue to the South Corporation Line of said City of Columbus.

(City Record Book 11, Page 516.)

Whereas, Application has been made in writing to the Board of Public Works, and the City Council of the City of Columbus, Ohio, for a franchise to construct, operate and maintain a street railway upon Rich street, Fifth street, Donaldson street, Livingston avenue, Mohawk street, Reinhard avenue, Jaeger street, Hanford street, Fourth street, Hosack street, Innis Avenue and Parsons avenue, to the south corporation line of the said city; and

Whereas, Notice of said application has been published according to law; and

Whereas, Bids have been advertized for and received by said city for the construction of a railroad upon said streets as required by law; and

Whereas, The Central Market Street Railway Company bid and agreed to carry passengers upon said proposed railroad along said route at a lower rate of fare than any other bidder; and

Whereas, The consent in writing of the owners of the majority of the feet front of the lots and lands fronting and abutting upon said parts of said streets has been obtained and filed with the Clerk
37 of said city for the construction, operation and maintenance of said street railroad. Now therefore,

Be it ordained by the City Council of the City of Columbus, Ohio, as follows, towit:

Section 1. That The Central Market Street Railway Company, its successors and assigns, be and is hereby granted permission and authorized to construct, operate and maintain a street railway in and upon the following streets in the city of Columbus, Ohio, towit: In Rich street from Third street to Fifth street; in Fifth Street from Rich street to Donaldson street; in and across Donaldson street and Livingston avenue to Mohawk street; in Mohawk street from Donaldson street and Livingston avenue to Reinhard avenue; in Reinhard avenue from Mohawk street to Jaeger street; in Jaeger street from Reinhard avenue to Hanford street; in Hanford street from Jaeger street to Fourth street; from Hanford street to the south corporation line of said city; in Hosack street from Fourth street to Parsons avenue; in Innis avenue from Fourth street to Parsons avenue; in Parsons avenue from Innis avenue to the south corporation line of said city in accordance with the provisions of this ordinance; with permission to connect the track or tracks on said streets with each other, and with the track or tracks of The Columbus, London and Springfield Railway Company, and The Columbus, Buckeye Lake and Newark Traction Company at Rich and Third streets, by means of a curve or curves.

Sec. 2. Said grantee and assigns shall have the right to lay down a single or double track on the route described in section 1 of this ordinance, with switches and turn-outs, wherever switches and turn-outs may be necessary or convenient, and to connect said track or tracks by curve or curves with its other track or tracks, and with the tracks of the other intersecting standard gauge street rail-
38 roads within the city limits of Columbus, Ohio.

A plan showing the location of such switches, tracks and turn-outs shall be submitted to the Board of Public Works of said city and approved by it, before the construction thereof.

Sec. 3. That said track shall be of a standard gauge of four feet and eight and one half inches in width, and on paved streets the rails shall be standard patterns, grooved rails, not less than 70 pounds to the yard, to be approved by the Board of Public Works, and upon such foundation as said Board shall direct. The space between the

inner rails where the double tracks are laid shall not exceed five feet, measured from rail to rail.

Sec. 4. Said grantee, its successors and assigns, shall keep in repair all that portion of said streets and avenues which is included within lines drawn one (1) foot outside of the outer rails of its said tracks; and shall pay for the cleaning, sweeping and sprinkling of said portion of the public way occupied by it, and one foot on the outside of its outer rails, at the rate and in the same manner required of the abutting property owners for the residue of the public ways adjacent to the said strip. If the City Council at any time orders the improvement of the roadway of any of said streets, avenues or alleys by laying down thereon a pavement of any kind, or a macadam roadway, said company, shall, at its own expense, improve that portion occupied by the tracks of said road and one foot outside thereof with the same character of material as is used on the remainder of the street, and shall relay its or their tracks on any street or streets so paved with grooved rails on foundations as specified in section 3 hereof; or if on any of the said streets or avenues a pavement has already been laid, and an assessment therefor placed on the tax duplicate, said company shall pay to the Director of Accounts of the city
39 of Columbus, Ohio, a proportion of the present value of the pavement covered by the assessment for said improvement as the space occupied by said tracks and one foot on the outside of the outer rails thereof bears to the entire width of the improved roadway. Such sum to be by the Director of Accounts paid to the City Treasurer, and by him to be credited to any portion of the assessment made for the cost of such improvement, remaining due from, and unpaid by, the several abutting property owners. Provided, that if in any case the amount so paid shall exceed the unpaid assessments, the excess shall be by the Director of Accounts paid to the abutting property owner entitled thereto. The present value of the street paving referred to in this section to be determined by the Board of Public Works in consultation with the officers of said railway company, and in case a satisfactory price cannot be agreed upon the matter is to be settled by arbitration according to the provisions of the Revised Statutes of Ohio.

Sec. 5. The pavement provided for in this ordinance shall be laid at such height of grade as may be fixed or determined by the Board of Public Works, and shall, during the existence of this ordinance, or grant, or any extension, amendment, or renewal thereof, be kept in repair under the direction, or under the supervision and direction of such officers as may be from time to time vested by law, or ordinance of the City Council, with the control and supervision of the public highways and works of the city, and on the failure of the company to make said repairs within thirty (30) days after receiving notice so to do from the Board of Public Works, the said board may make the same, or cause the same to be done, and the said City of Columbus shall collect all the cost and expense thereof from said company and the entire amount of such cost and expense shall constitute a lien and charge upon the property and franchise of said company, the same as if formally levied and assessed as in

the case of other municipal improvements. That whenever
40 the said railway is being put down on any improved street or streets said grantee and assigns shall grade the street from curb to curb at its own expense, and on a level with its tracks.

Sec. 6. Said grantee and its assigns shall at all times hereafter defend, keep harmless and indemnify the city of Columbus from any and all damages, lawful claims, and demands for injuries to persons or property, cost and expenses to which said city may be subjected or made liable by any proceeding at law or in equity growing out of the grant of the privileges in this ordinance granted, or out of the exercise or enjoyment of the same by said grantee and its assigns, or out of the failure of said grantee and assigns, to construct or keep in repair the pavement or other improvements by them herein required to be constructed and maintained; and said grantee or its assigns may, at its own cost, defend against such action, either in its own name or in the name of the City of Columbus.

Sec. 7. The said city of Columbus shall have the right to remove or obstruct, or authorize the same to be done, any portion of said railroad track wherever it shall be necessary in laying down or repairing water pipes, gas pipes, sewers, drains, gutters or cisterns or by hose or any other apparatus necessary to be used in extinguishing fire, or any other public work or improvement required to be done by said city, not disturbing the running of cars where it can be avoided, without incurring any liability for damage to said grantee.

Sec. 8. The said city of Columbus shall not be liable in any way to said grantee or its assigns, for damages it may sustain from the breaking or overflow of water from any sewer or drain, or from the breaking of any water pipe or gas pipe, or by reason of any change in the grade of said streets, and said grantee and assigns shall so construct the track as to fully protect from damage thereby any and all sewers, water pipes and mains, gas or other pipes running beneath
11 the surface of the streets. Whenever the surface drainage of any street (whether improved or unimproved) be obstructed by the laying of said track the said grantee or its assigns shall construct all catch basins and pipe lead-offs, or relay so much of the paved roadway of said street at its or their expense, as in the opinion of the said Board of Public Works may be necessary to overcome the effects of such obstruction.

Sec. 9. In case it becomes necessary for said grantee and its assigns to remove the snow and ice from the tracks on said streets, it shall not be left in such a manner as to interfere with or impede travel or render the streets dangerous.

Sec. 10. The conductors, drivers or motormen of cars shall not allow any woman or child to enter or leave any car while in motion, and shall keep vigilant watch for all teams, carriages, persons and obstructions upon or near the track, and upon the first appearance of danger thereto, shall give warning and stop the car, if necessary, to prevent accident, and either the driver, conductor or motorman must always be on the front platform while the car is in motion.

Sec. 11. No car shall be run at a greater rate of speed than twelve miles an hour. Cars driven in the same direction shall not approach

nearer to each other than one hundred feet, unless from unavoidable necessity, or on switches or turn-outs. Said grantee and assigns shall at all times conform to such general rules and regulations as may from time to time be made by the council as to the rate of speed it may run its cars, and while the cars of said grantee and assigns are in motion or about to start, warning shall be given by bell or otherwise, to notify persons of any immediate or approaching danger.

Sec. 12. Permission is hereby given said grantee and its assigns to operate its entire line of street railway with any and all extensions that may hereafter be made thereto, by electricity or other
42 motive power, other than animal or steam power, as shall be acceptable to the city for such purposes. Said grantee and its assigns shall have the right to erect and maintain iron or wood poles, painted and neat in appearance, wires, fixtures and conduits, and any and all other appliances or appurtenances that in the opinion of said city shall be found necessary. At and after dark, all cars running shall be lighted and provided with suitable signal lights, and cars shall be kept clean, and when the temperature is below 35 degrees Fahrenheit, shall be heated. No car shall be allowed to remain standing upon the line of said route for passengers or any other purpose, so as to impede any other vehicle, but shall be subject to such police regulations as are, or may be, prescribed for other vehicles, so far as they may be applicable. No car or cars shall be used on such railroad if so worn, broken or constructed, or kept in such condition as to imperil the lives, limbs or health of the passengers; provided, that if at any time during the life of this grant or any extension thereof said city shall require by ordinance all trolley wires or other electric wires in the principal business district of said city to be placed in conduits under ground, said grantee and its assigns shall within a reasonable time after the passage of such ordinance, and which time shall be fixed by said city, place all its trolley and feed wires within said district under ground. In the construction of its system of trolley wires said company and its assigns shall guard against injury to the water and other pipes of said city from electrolysis by the use of what is known as the "double trolley system" or such other device as may be approved by the Board of Public Works for that purpose.

Sec. 13. In the erection and placing of wires or conduits and in the use of any and all other appliances or appurtenances found necessary to operate its line, a plan of the same, showing all poles,
43 wires and other appliances or appurtenances that said grantee and its assigns shall desire to use, shall be submitted to and approved by the Board of Public Works. Said city shall have the right to fix the height of all wires and poles above the street, the size and location of all conduits in the street, and the distance at which poles shall be apart, and to regulate the places within the street where any and all tracks, appliances and appurtenances shall be located and to establish such regulations with reference to public safety and protection as the said city shall from time to time deem necessary and proper.

Sec. 14. Cars shall be run by said grantee, and its assigns, at no longer intervals than fifteen minutes, unless prevented by unavoid-

able casualty, and shall be operated regularly between 8 a. m. and 10 p. m. on Sundays, and between 5:30 a. m. and 11:30 p. m. on all other days; and said grantee and its assigns shall not run a train of more than three cars, including the motor, on any of its lines in said city.

Sec. 15. The Central Market Street Railway Company, and its assigns, shall be entitled to charge fares as follows, and no more: For single fare within the corporate limits of said city, five cents; for seven tickets, twenty-five cents. No charge to be made for children under six years of age, attended by parents or other persons in charge of them. Children over six and under twelve years of age shall pay three cent fares. For each five cent fare said company and its assigns, shall on demand, at the time of payment of said fare, issue a transfer slip good for continuous passage within said city, over any line of railway connecting with or intersecting its line of railway, now or hereafter built, if presented within twenty minutes after leaving the car of the issuing company, providing said transferee line be required by said city to accept such transfer slip for such passage. And the said The Central Market Street Railway Company, and
44 its assigns, shall be required to accept from any such connecting or intersecting line, similar transfer slips, which shall be good for immediate continuous passage over its line within said city of Columbus. The fares paid, for which such transfers are issued, shall be divided equally between the operators of the two connecting or intersecting lines of railways over which said fares are paid.

Sec. 16. Said grantee and its assigns, shall have the right to carry passengers, United States mail, packages, express matter, baggage and freight, on its said lines in said city of Columbus, but shall not have the right to move along its lines within the business district of said city any steam railroad freight or passenger cars, and all cars of said company and its assigns carrying packages, express matter, baggage and freight, shall be loaded and unloaded in a depot or a place to be hereafter designated by said company and its assigns on lands abutting on its said line, and shall have the right and permission to put in proper curves, switches and tracks on said streets and avenues from its said lines to its said depot across the sidewalk in front thereof to said depot at any point along its said line in said city of Columbus. Said company or its assigns may select for its use in loading, unloading and storing all kinds of freight and its cars, except live stock, and shall have the like right and permission to put in proper curves, switches and tracks on said streets and avenues from its said lines to said depot across the sidewalk in front thereof, at any point along its said lines in the said city of Columbus.

Sec. 17. Said The Central Market Street Railway Company or its assigns, shall have the right to connect its lines with the standard gauge loop in the central portion of said city, and shall have the right and permission to use and occupy said loop under the
45 terms and conditions contained in section 15 of ordinance No. 16,676, passed by the council of the city of Columbus, on the 23rd day of April, 1900, except that said company and its assigns shall only be required to run its said passenger cars over said loop, as

required by this ordinance over its other lines within said city, and all the lines of said company and its assigns in said city shall be subject to all provisions contained in said section fifteen (15) of said ordinance No. 16,676 aforesaid.

Sec. 18. As a consideration for the grants herein made the said The Central Market Street Railway Company and its assigns shall pay to the city of Columbus the following per cent upon the gross receipts of said company for local passengers fares receiver within said city of Columbus, towit: two per cent of said fares, during the term of said franchise, provided that by "local fares" is meant only those fares for passengers transported entirely within the limits of said city and does not include any part of fares for passengers carried partly within and partly without said limits. Said payments shall be made annually at the beginning of each calendar year for the amounts earned during the preceding year, accompanied by a statement of the gross receipts during said period from local fares, duly verified by the proper officer of said company and filed with the Director of Accounts.

The director of Accounts of said city, within 30 days immediately following the time of said payment, shall have access during business hours, to the books of said grantee or assigns for the sole purpose of ascertaining the amount of local fares received by said grantee or its assigns for carrying said passengers within said city limits during such preceding year. Provided, however, that if at the beginning of any calendar year the said The Central Market Street Railway Company, and its assigns, shall notify said city of
46 Columbus that it will, and shall thereafter sell tickets for one passage upon its road in Columbus, Ohio, at the rate of eight tickets for 25 cts. and 33 tickets for one dollar, then said railway company shall be relieved from the further annual payments to said city under this section so long as it shall continue to sell tickets at such reduced rates.

Sec. 19. This grant is made and shall continue in force for the full period of twenty-five (25) years from and after the 23rd day of April, 1900, and all franchises and grants to said grantee and its assigns for extensions of lines, turn-outs, switches, connections or additional lines of street railway connected with, or to be connected with the lines of street railway of said grantee and its assigns, authorized and permitted under this ordinance, shall be considered a part of the system of street railway hereby authorized, and shall expire and wholly terminate with the expiration of the franchise and grant authorized under the terms of this ordinance.

Sec. 20. This grant is made upon the condition that said railroad shall be constructed and ready for operation within said city of Columbus within two years from the passage of this ordinance, and if not constructed and in operation within said time the grant herein and all rights thereunder shall thereupon and without any action on the part of said city, cease and determine. Provided that if said grantee and its assigns be delayed in the construction by injunction or other proceedings in court over which it has no control, the time it is so delayed by such proceedings shall not be counted as a part of the period within which said railway is to be constructed and made

ready for operation, but said period for such construction and putting in readiness for operation shall be extended by adding to the period of two years aforesaid the length of time said company is so delayed by said causes.

Sec. 21. Upon the expiration of the term of twenty five
47 (25) years, provided by this ordinance, unless such grant has been renewed or extended by said city, the city of Columbus shall have the right by giving two years' notice in writing, before the expiration of said term of twenty five years, of its intention so to do, to purchase of the said grantee and its assigns so much of its lines of railway as then lies within the city at a purchase price to be fixed by three disinterested men, one of whom shall be selected by the city, one by said grantee or its assigns, and the third by the two so chosen; provided, that if said city shall not elect to purchase said portion of said railway or shall not renew or extend said grant, then said grantee and its assigns shall within eight months from the expiration of said time remove the tracks, wires, poles and conduits and other properties from the streets so occupied by it, and shall leave the portions of the streets so occupied by them in good condition and repair. And if the said city elects to make said purchase the price fixed therefor shall be paid the said grantee or its assigns in cash before taking possession of said part of said railway, and within sixty days after said price is so fixed by said arbitrators; and in default of such payment within said time said option to cease and determine.

Sec. 22. The said city hereby reserves the full right and power to grant to any other company, corporation or individual, the right to jointly use all or any part or parts of said tracks with said The Central Market Street Railway Company and its assigns, and with each other upon equitable terms of payment to said The Central Market Street Railway Company, and its assigns, taking into consideration the value, cost of construction, amounts paid and repaid for street paving and other street improvements and the maintenance of the tracks so used and of the power used for operation. In the
48 event said terms cannot be agreed upon by said owning, succeeding or assignee company, and the party applying for said joint use within sixty days after application therefor following a grant for such joint use by said city, said terms shall be submitted to arbitration, one arbitrator to be chosen by said owner, successor or assignee, one by the party desiring to jointly use said tracks, and these two so selected to select the third arbitrator. The decision of said arbitrators in the absence of fraud, accident or mistake of law or fact, to be final and conclusive on both parties. But said city of Columbus reserves the right to fix and determine by ordinance the rules and regulations governing such joint use and occupation. Provided, that neither the arbitration herein mentioned nor any appeal therefrom, shall in any manner delay the joint use and occupation by any person, firm or corporation, which shall receive a grant thereof as aforesaid, with The Central Market Street Railway Company, under such rules and regulations as shall have been fixed by said city as aforesaid. Provided further, that said The Central Market Street Railway Company and its assigns, shall not have the

right to grant to any other company, corporation or individual, permission to use any portion of its said tracks within said city without such permission having first been given by said city.

Sec. 23. The said city also reserves the right to grant to any other company, corporation or individual, permission to lay, on that part of Parsons avenue covered by this grant, at its or their own expense, any additional rail or rails, to be used by such company, corporation or individual in connection with the rail or rails, ties and roadbed of The Central Market Street Railway Company; the use thereof and the compensation to be paid to said The Central Market Street Railway Company and its assigns, for such use to be arrived at and determined by arbitration in the manner and with like effect as
49 provided by section 22 of this ordinance. Provided that the laying of such additional rail or rails shall be under the supervision and subject to the approval of the Board of Public Works of said city.

Sec. 24. The terms "The Central Market Street Railway Company," "said company," "the Grantee," and "the Company," wherever used in this ordinance, unless the connection clearly indicates a different intention, is intended, and shall be construed, to mean "The Central Market Street Railway Company and its assigns."

Wherever in this ordinance the term "the City of Columbus," "the city," or "said City" is used, said terms, unless the connection clearly indicates a different intention, is intended, and shall be construed, to mean "the city of Columbus, Ohio."

Sec. 25. This ordinance shall take effect and be in force from and after its passage and legal publication, and the filing with the City Clerk of said city by said company of a written acceptance of its terms and conditions, and the payment of said company of the cost of publication of this ordinance.

Passed January 21, 1901. JAMES J. THOMAS,
President of the City Council.

Approved by the Mayor, January 22, 1901.
Attest:
JOHN T. BARR,
City Clerk.

50 EXHIBIT No. 3.

Columbus, Ohio, August 20, 1918.

To the City of Columbus, Ohio, George J. Karb, Mayor of Said City, James J. Thomas, City Clerk of Said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Arthur P. Lamneck, Joseph C. Nailor, Edgar L. Weinland, and Fred P. Zimpfer, Members of the City Council of Said City, City Hall, Columbus, Ohio:

The Columbus Railway Power and Light Company, hereinafter referred to as This Company, has for sometime past been operating

its street railway lines in the city of Columbus under two certain franchises granted by said city, the first to The Columbus Railway Company for a term of twenty five years by ordinance approved February 6, 1901, sometimes called and hereinafter referred to as the Blanket Franchise, duly transferred and conveyed by that company to this company by deed dated January 29, 1914, and the second to The Central Market Street Railway Company for twenty five years by ordinance approved January 22, 1901, hereinafter referred to as the Central Market Franchise, duly conveyed, after foreclosure proceedings, to this company by deed dated March 1, 1907.

This company is the owner of certain other franchises previously granted to predecessors in title of The Columbus Railway Company but duly transferred and conveyed by said company to this company by the deed aforesaid of January 29, 1914, which said franchises were granted without limitation of time and are perpetual. The streets covered by these perpetual franchises are set forth in Section 20 of said Blanket Franchise ordinance under the heading "Perpetual Franchises." Said section reads as follows:

"The grants and provisions hereinbefore made and contained for the renewal of the franchise of the said The Columbus Railway Company on the streets and avenues hereinbefore mentioned in section 1 of this ordinance, shall in all respects apply to the
51 grants, rights, privileges and franchises of the predecessors in title of said The Columbus Railway Company, to construct, maintain and operate lines of street railway on Main street (formerly called Friend Street) from High street to Rose Avenue; on State Street from High street to Grant avenue; thence in a northerly direction on Grant Avenue to Oak street; thence on Oak street in an easterly direction to Sherman avenue, (formerly called Bruce street); on Long street from High street in an easterly direction to Mulberry street, and thence in a southerly direction on Mulberry street from Long street to Broad street; on Cleveland avenue in a northerly direction from Long street to Mt. Vernon avenue; thence in an easterly direction on Mt. Vernon avenue to Washington avenue; on West Broad street from High street to a point opposite the center of the east drive way to the Central Hospital for the Insane, (the same being the corporation line of the city of Columbus, as established by ordinance of the city of Columbus, passed on or about May 18, 1890); on Glenwood avenue in a southerly direction from Broad street to the Harrisburg pike; thence in a southwesterly direction on the Harrisburg pike to Green Lawn cemetery; as fully as if the routes and streets and avenues mentioned in this section were specifically mentioned and included in the first section of this ordinance, if, and so far as, the franchises in the streets and avenues mentioned in this section or either of them or any part thereof shall hereafter be judicially declared by a court of competent jurisdiction, or by any appellate court to which any suit brought to test any or all of said franchises shall be brought, may be carried by proceedings in error or on appeal, not to be franchises in perpetuity.

"It is expressly provided that nothing contained in this ordinance is intended, nor shall anything herein be construed to be, a con-

cession by said city of Columbus of the validity of any claim
52 of said company to perpetual franchises to operate lines of street railroad in all or any of the streets and parts of streets named in this section.

"It is further expressly provided, that nothing contained in this ordinance shall be pleaded or considered to be a bar to any suit or suits which may hereafter be brought in any court or courts of competent jurisdiction, seeking to test the validity of any claim or claims to said company to perpetual franchises to operate any line or lines of street railroad upon any of the streets or parts of streets mentioned in this section."

Under the provisions of the Blanket Franchise and the Central Market Franchise, this company has for a number of years been issuing and selling eight tickets for twenty-five cents and giving universal free transfers thereon, which represents a lower street railway fare than is in force in any city in the United States and is under present circumstances non-compensatory and confiscatory.

The street railway property of this company is worth more than twelve millions of dollars on any reasonable basis of investment or physical value. The bonds outstanding fairly chargeable against the street railway property amount to $7,225,000 on which the annual interest charge amounts to over $333,000. Under the law, this company is entitled to earn from the operation of its street railway lines a fair return upon the value of the property which it employs in furnishing street railway service to the people of the city of Columbus.

Recently the operating expenses of this company, as of all other street railway companies, have greatly increased, owing to the increased and increasing cost of all materials and supplies, in many instances more than one hundred per cent, and to the higher wages
that all such companies have been required to pay to their
53 employes. The taxes and necessary replacement and other depreciation charges have also materially increased. Take, for example, the coal bill; in the year 1915, this company paid for coal required to operate its street railway lines the sum of $60,164; the bill, in the year 1916, was the sum of $81,354; and in the year 1917, the bill increased to the sum of $234,838. Also, the wage account of the railway employes of this company, in the year 1916, amounted to the sum of $806,336; but in the year 1917, it had increased to the sum of $887,994. These large increases in operating and maintenance expenses have resulted in corresponding decreases in the net earnings of this company. Its street railway net earnings for the twelve months ending June 30, 1918, after deducting operating expenses and taxes and setting aside a proper amount to represent depreciation, were only the sum of $301,987, which was not enough to pay the interest on the bonds outstanding properly chargeable against the street railway property of this company.

In the month of June, 1918, railway employes of this company demanded higher wages, and, after some negotiations, the controversy was submitted for arbitration to the National War Labor Board. By the decision of that Board, rendered July 31, 1918, the

wages of the railway employes of this company were increased over fifty per cent, resulting in an increase of more than $560,000 over the highest amount ever paid by this company to its railway employes in any one year. With this increase, the wages required to be paid by this company to its railway employes will be more than $1,500,000 per year.

It will thus be seen, that although this company was not earning a fair return on its street railway property prior to the wage increase fixed by the National War Labor Board, the added burden of the Board's wage award will result in leaving this company without any net earnings whatever. In fact, its gross earnings will fall
54 short by more than $250,000 of meeting its operating expenses, without allowing anything whatever for interest on its bonds, which interest must be paid.

This company is a public utility upon which the law imposes certain duties and obligations, including the duty of maintaining its property in good order and repair, so that it may render adequate and satisfactory service to the public. This company can not do this unless it receives sufficient revenue from the operation of its cars, which means that the rates must be adequate. The rates prescribed in those two franchise ordinances are inadequate and confiscatory, and all rights of the city and of the public thereunder are and must be subject and subordinate to the provisions of the Fourteenth Amendment to the Constitution of the United States prohibiting the State or any municipality therein from depriving this company of its property without due process of law, that is, in the present case, from forcing upon this company inadequate and confiscatory rates of fare.

On February 25, 1918, this company, appreciating the situation then existing, requested in writing the city council of the city of Columbus to authorize this company to charge higher rates, but this request was summarily refused. A later request for relief was also refused, notwithstanding the belief expressed by the Mayor and some members of the City Council that relief should be granted.

Increased revenue and proper compensation for service rendered are necessary in order that this company may continue to perform its public duties. And this fact was recognized by the National War Labor Board, which in its award granting large increases in the wages of this company's railway employes, said:

"This increase in wages will add substantially to the operating cost of the company and will require a reconsideration by the proper regulating authority of the fares which the company is allowed by law to collect from its passengers. We make part of this
55 award the words we have used in the award in the Cleveland case: We have recommended to the President that special congressional legislation be enacted to enable some executive agency of the Federal Government to consider the very perilous financial condition of this and other electric street railways of the country, and raise fares in each case in which the circumstances require it. We believe it to be a war necessity justifying Federal interference. Should this be deemed unwise, however, we urge upon the local au-

thorities and the people of the locality the pressing need for such an increase adequate to meet the added cost of operation."

And again that Board in its award said:

"In justice the public should pay an adequate war compensation for a service which can not be rendered except for war prices. The credit of these companies in floating bonds is gone. Their ability to borrow on short notes is most limited. In the face of added expenses which this and other awards of needed and fair compensation to the employes will involve, such credit will completely disappear. Bankruptcy, receiverships and demoralization, with failure of service, must be the result. Hence our urgent recommendation on this head."

This company must now refuse to continue the plan of issuing and selling eight tickets for twenty-five cents with universal free transfers, and now hereby surrenders, relinquishes and cancels the aforesaid Blanket Franchise and the aforesaid Central Market Franchise, and it will no longer operate its cars thereunder. It will hereafter consider and hold itself a tenant at sufferance in those streets which are not covered by its perpetual franchises, and it will withdraw from those streets whenever the city notifies it to do so. In order to give street railway service to the people of the city of Columbus, this company will continue to operate its street
56 railway lines, but not under said two franchises or either of them, upon all of the streets of the city until notified by it to withdraw from those streets not covered by the aforesaid perpetual franchises.

This company does hereby give further notice to the city that it will at once discontinue the sale of eight tickets for twenty five cents and the giving of universal free transfers and that it will hereafter charge five cents for a single ride and one cent for each transfer, transfer slips to be used at designated transfer points. In regard to the tickets heretofore sold and now outstanding in the hands of the public, this company will accept and honor them as heretofore.

Respectfully submitted,

By order of the Board of Directors,

THE COLUMBUS RAILWAY, POWER & LIGHT COMPANY.

By S. G. McMEEN, *President.*

57 And afterwards, to-wit: on the 20th day of August, A. D. 1918 came the Plaintiff, by its Solicitors, and filed in the Clerk's Office of said Court its Motion for Temporary Restraining Order and Preliminary Injunction, which said Motion is clothed in the words and figures following, to-wit:

Motion for Temporary Restraining Order and Preliminary Injunction.

In the United States District Court for the Southern District of Ohio, Eastern Division.

No. —. In Equity.

THE COLUMBUS RAILWAY, POWER AND LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

Motion for Temporary Restraining Order and Preliminary Injunction.

The plaintiff in the above entitled suit now hereby moves the court to grant it, pending the suit, a temporary restraining order and preliminary injunction against the defendants, and each of them, their officers, servants, employes and agents, and their respective successors in office, as prayed for in the bill of complaint herein.

WILLIAM O. HENDERSON,
HENRY J. BOOTH,
HENDERSON & BURR,
BOOTH, KEATING, POMERENE & BOULGER.

Solicitors for Plaintiff, The Columbus Railway, Power & Light Company.

JOSEPH S. CLARK,
HENRY A. McCARTHY,
Of Counsel.

58 And afterwards, to-wit: on the 23rd day *od* August, A. D. 1918, came the Defendants by their Solicitors, and filed in the Clerk's Office of said Court, their certain Motion to Dismiss, clothed in the words and figures following, to-wit:

Motion to Dismiss.

In the United States District Court for the Southern District of Ohio, Eastern Division.

In Equity.

No. —.

THE COLUMBUS RAILWAY, POWER & LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

Motion to Dismiss.

Now come all the defendants in the above entitled action, and move the Court to dismiss this action and that they take their costs in this suit incurred for the following reasons:

I.

That there is no diversity of citizenship in this cause as a basis of the jurisdiction of the Court.

II.

The plaintiff's bill does not show that any federal question is made for the consideration of this Court.

III.

That there is insufficiency of fact to constitute a valid cause of action in equity against these defendants or either of them.

IV.

The bill does not state any facts which show that the Fourteenth Amendment to the Constitution of the United States has been vio-

lated, or that any right of the plaintiff under that Amend-
59 ment has been invaded by the defendants, or either of them.

HENRY L. SCARLETT,
The City Attorney of Columbus, Ohio,
Solicitor for Defendants.

JOSEPH A. GODOWN,
Of Counsel.

And afterwards, to-wit: on the 24th day of August, A. D. 1918, an Order was entered in the above entitled cause, clothed in the words and figures following, to-wit:

Order of Disqualification of Judge J. E. Sater, District Judge.

60 United States District Court, Southern District of Ohio,
Eastern Division.

In Equity.

No. 104.

THE COLUMBUS RAILWAY, POWER & LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

This day this cause came on to be heard, and it appearing to the court from the issues made and from the statements of counsel that the determination of this cause and the issues therein involved will reflect upon and affect the value of the stocks and other securities issued by the plaintiff;

And it further appearing that a member of the Court's family is one of the plaintiff's stockholders;

It is Now Therefore Hereby Certified that, by reason of the premises, this court is disqualified from sitting in the trial of this cause and from hearing and determining any of the issues therein presented; and it is ordered that this certification be entered by the Clerk upon the records of this court and that such Clerk transmit to the Circuit Judges of this Judicial Circuit a copy of such certification; which said Judges (or some one of them) are hereby requested to designate another Judge to appear at Columbus, Ohio,

or elsewhere within this District, in the reasonably near future, and hear this cause and the issues therein tendered.

J. E. SATER,
United States District Judge,
Southern District of Ohio.

[Endorsed:] No. 104. In Equity. United States District Court, Southern District of Ohio, Eastern Division. The Columbus Railway, Light & Power Co., Plaintiff vs. The City of Columbus, Ohio, et al., Defendants. Filed Aug. 24, 1918. B. E. Dilley, Clerk.

And afterwards, to-wit: on the 2nd day of September, A. D. 1918, an Order was entered in the above entitled cause, clothed in the words and figures following, to-wit:

61 *Designation of D. C. Westenhaver, District Judge.*

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To the Honorable D. C. Westenhaver, District Judge of the United States for The Sixth Judicial Circuit:

Whereas, it duly appearing that one of the United States District Judges for the Southern District of Ohio is disqualified by interest from sitting in the trial of the cause pending therein (No. 104 in Equity, Eastern Division), in which the Columbus Railway, Power and Light Company is plaintiff and the City of Columbus, Ohio, and others are defendants, and from hearing and determining any of the issues therein presented; and it further appearing that the other judge of said district court is absent from the district; and it further appearing that one or more of the issues in said cause require prompt hearing and determination; therefore, I the undersigned, being the senior circuit judge in said Circuit qualified to act in the premises, do hereby, in pursuance of Sections 14, 17 and 20 of the Judicial Code, designate and appoint you to hold the said District Court in place or in aid of the proper district judge of said district, and to exercise within the district, from the second day of September to the 31st day of December, 1918, in said cause, the same powers that are vested in the judge thereof.

August 31, 1918.

LOYAL E. KNAPPEN,
United States Circuit Judge,
Sixth Judicial Circuit.

[Endorsed:] 104. Col's Ry. Power & Lt. Co. v. City of Columbus, et al. Designation. Filed Sept. 2, 1918. B. E. Dilley, Clerk.

And afterwards, to-wit: on the 3rd day of September, A. D. 1918, there was filed in the Clerk's Office of said Court a certain Affidavit in said cause, which said Affidavit is clothed in the words and figures following to-wit:

62 *Affidavit of Samuel G. McMeen.*

In the United States District Court for the Southern District of Ohio, Eastern Division.

In Equity.

No. 104.

THE COLUMBUS RAILWAY, POWER AND LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

v.

THE CITY OF COLUMBUS, OHIO, et al., Defendants.

On Motion to Dismiss and Motion for Temporary Restraining Order.

Affidavit of Samuel G. McMeen.

STATE OF OHIO,
Franklin County, ss:

Personally appeared before me, a notary public in and for said county, the said Samuel G. McMeen, who being duly sworn according to law, did depose and say: That he is the president of The Columbus Railway, Power and Light Company; that he has read the affidavit of Norman McD. Crawford prepared to be filed in this case; that the facts set forth therein are true; that in addition to said facts deponent says that ever since the war in Europe broke out the operating expenses of all of the street railway companies in the United States have very materially increased, resulting in reduced income; that a great many of such street railway companies have made applications for relief in the shape of higher street railway fares to the local authorities, including the city councils and public service commissions, and that in a great many cases relief
63 has been granted; that the necessity of providing additional revenue by increasing street railway fares has already been fully demonstrated by the rapidly increasing cost of operation, and is fully recognized by the granting of such relief in about 250 municipalities of this country, a recent list of such increases granted by state commissions, by city councils and by new schedules filed without protest by the local authorities, showing the present fares in various cities classified as follows, said classification showing the prevailing rates of fare after such increases:

Ten-cent Fare	3 cities.
Eight-cent Fare	1 city.
Ten-cent Owl Service—7-cent Regular	1 city.
Ten-cent Owl Service; 6-cent Regular	1 city.
Ten-cent Owl Service; 5-cent Regular	5 cities.
Seven-cent Fare	43 cities.
Six-cent Central Zone with Additional Charge for Ride Outside	16 cities.
Six-cent Fare	86 cities.
Six-cent Fare on Part, Five-cent Fare with Additional Cent for Transfer on Remainder	1 city.
Five-cent Central Zone with Additional Charge for Ride Outside	11 cities.
Five-cent Fare; One-cent Charge for Transfer	17 cities.
Reduced Rates Eli-nated	42 cities.
Four-cent Fare; One-cent Charge for Transfer	1 city.
Workmen's Reduced Rates Abolished	18 cities.

Deponent further says that the necessity for relief in the shape of higher street railway fares is directly due to the increase in operating expenses which is directly due to the war emergency; that the War Labor Board appointed by the President of the United States has expressly recognized the necessity for higher street railway fares and has publicly recommended to all local authorities with power to increase street railway fares that they should exercise this authority and give appropriate increases. The War Labor Board is particularly interested in this proposition because it has found it
64 necessary in settling labor controversies to award very great increases in the wage accounts of the street railway companies, and it has recognized the fact that the only way that these increased operating expenses can be met was by increased fares; and further deponent saith not.

SAMUEL G. McMEEN.

Sworn to before me and subscribed in my presence this 3rd day of September, 1918.

[SEAL.] A. T. BURINGTON,

Notary Public in and for said County.

And afterwards, to-wit: on the 3rd day of September, A. D. 1918, there was filed in the Clerk's Office of said Court, a certain Affidavit, in said cause, which said Affidavit is clothed in the words and figures following, to-wit:

65 *Affidavit of Norman McD. Crawford.*

In the United States District Court for the Southern District of Ohio, Eastern Division.

In Equity.

No. —.

THE COLUMBUS RAILWAY, POWER AND LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

On Motion to Dismiss and Motion for Temporary Restraining Order.

Affidavit of Norman McD. Crawford.

STATE OF OHIO,
County of Franklin, ss:

Personally appeared before me a Notary Public in and for said State and County Norman McD. Crawford, who being sworn according to law, did depose and say that he is the Vice President of The Columbus Railway, Power & Light Company; that said Company owns and operates a system of street railways in the City of Columbus, Ohio, and in addition generates and sells electricity for light and power, and particularly sells a large amount of electricity for power purposes to industries in the City of Columbus, Ohio, and in territory adjacent to said City to be used by them for their
66 war purposes; that the demand for power for war purposes has been constantly increasing ever since the war broke out, and at the present time the facilities of said Company for the manufacture of power for these purposes as well as for its other purposes are being taxed almost to their limit; that some time ago the Company in anticipation of these increased and increasing demands for power for war purposes determined if possible to increase its generating ap-aratus by the installation of a new unit at a cost of approximately $750,000. It became necessary for the Company to finance the cost of this new unit and it determined to issue a series of $2,500,000 of two year notes to provide the necessary money and also to finance maturing obligations; that said Company several months ago made application to the War Finance Corporation which was

organized by the act of Congress, for the purpose of furnishing financial assistance to the public utilities and other corporations engaged in work necessary or contributory to the prosecution of the war. Said Company asked the War Finance Corporation to underwrite or purchase $1,000,000 of these $2,500,000 of notes; that upon the hearing of said application the first question asked representatives of said Company was in regard to the low schedule of street railway fares prevailing in the City of Columbus and whether it would not be possible to secure relief from the local authorities in the shape of higher fares. The Board of the War Finance Corporation was advised that efforts were being made to accomplish this result but they were obliged to admit that no success had at that time been obtained in this particular. Said Company's representatives urged upon the Board of the War Finance Corporation that the Company is extensively engaged in war work and that the installation of this new power unit is necessary in order to furnish the power which war industries in Columbus and territory adjacent thereto must
67 have in order to carry out their war work. The Board of the War Finance Corporation states that it did not see why the federal authorities should come to the assistance of the Columbus Company when assistance was refused by the local authorities. As the result of the hearing, however, the War Finance Corporation agreed to purchase and underwrite $750,000 of the new $2,500,000 of notes, provided the Company could place the remaining $1,750,000. Efforts to accomplish this result have been made by deponent and other representatives of The Columbus Company, said deponent having interviewed on this subject people in the Cities of Cincinnati, Cleveland, New York and also other cities, and each time that the question has been discussed with prospective purchasers deponent has been met with the statement that the street railway fares in the City of Columbus are so low that said prospective purchaser is very loath to invest any money in the Company operating said street railway lines, and very recently further argument and objection have been made by said prospective purchasers that the city authorities have expressly encouraged and advised the street car riders in the city of Columbus to refuse to pay their fares; that the Columbus Company has not as yet been able to sell all of said $1,750,000 of notes, and it is therefore extremely doubtful whether the Company will be able to secure $750,000 from the War Finance Corporation to be invested in the City of Columbus and to make it possible for the Company to furnish the power to said war industries which they must have in order to carry out their war work.

And further deponent saith not.

NORMAN McD. CRAWFORD.

Sworn to before me and subscribed in my presence by the said Norman McD. Crawford, this 3rd day of September, A. D. 1918.

[SEAL.] HARRY M. RUNKLE.

Notary Public in and for said Franklin County, Ohio.

68 And afterwards, to-wit: on the 3rd day of September, A. D. 1918, an Entry was made on the Journal of said Court in said cause, which said Entry is clothed in the words and figures following, to-wit:

Order—Leave to File Amended Bill.

No. 104.

THE COLUMBUS RY., POWER & LIGHT CO.

vs.

CITY OF COLUMBUS et al.

For good cause shown, leave is granted plaintiff to file an amended bill of complaint and the same is filed.

And afterwards, to-wit: on the 3rd day of September, A. D. 1918, came the Plaintiff by its Solicitors and filed in the Clerk's Office of said Court, its certain Amended Bill of Complaint, against said Defendants, which said Amended Bill of Complaint is clothed in the words and figures following, to-wit;

69 *Amended Bill of Complaint.*

In the United States District Court for the Southern District of Ohio, Eastern Division.

In Equity.

No. 104.

THE COLUMBUS RAILWAY, POWER AND LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

Amended Bill of Complaint.

To the Honorable the Judges of the District Court of the United States for the Southern District of Ohio, Eastern Division:

The plaintiff, The Columbus Railway, Power and Light Company, complains and says:

1. The plaintiff is a corporation of the State of Ohio duly incorporated, organized and existing for the purpose, among others, of acquiring by purchase or lease, constructing, extending, owning, maintaining and operating by means of electricity, street railroads or interurban railroads, or both, in the City of Columbus, County of Franklin and State of Ohio, and lines of such railroads extending from said city, within, through and between the municipali-
70 ties located in said county and in territory contiguous to said county, with such termini as are or may be designated in the several ordinances, resolutions and orders granting and establishing the same; and it owns and operates, among other things, a system of street railway lines in the City of Columbus, Ohio.

2. The defendant, the city of Columbus, Ohio, is a municipal corporation of the State of Ohio duly incorporated, organized and existing under the laws of said State. The defendant, George J. Karb, is the duly elected, qualified and acting Mayor of said City of Columbus. The defendant, Henry L. Scarlett, is the duly elected, qualified and acting City Attorney and City Solicitor of said city. The defendant, James J. Thomas, is the duly elected, qualified and acting City Clerk of said city. And the defendants, Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Arthur P. Lamneck, Joseph C. Nailor, Edgar L. Weinland and Fred P. Zimpfer, are the duly elected, qualified and acting members of the City Council of said city.

3. This suit is a civil suit, and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.

4. The plaintiff and its predecessors in title have since the enactment of the two ordinances mentioned in this paragraph and until the 20th day of August, 1918, been operating said system of street railway lines in the City of Columbus, which system consists of more than one hundred and ten (110) miles of track with necessary switches, turn outs and overhead construction, under two certain franchises granted by said city, to-wit:

(*a*) A franchise granted by an ordinance, entitled:

71 "An Ordinance, No. 17801,

Renewing to The Columbus Railway Company, for a term of twenty-five (25) years, its grants, rights, privileges and franchises, to maintain and operate its tracks and lines of street railroad upon the streets and avenues, and parts of streets and avenues, hereinafter mentioned, in the City of Columbus, Ohio, and prescribing the terms and conditions thereof, and repealing the provisions of any and all ordinances and resolutions, and parts of ordinances and resolutions, inconsistent with the terms of this ordinance," said ordinance having been duly passed by the City Council of said city on February 4, 1901, and duly approved by the Mayor of said city on February 6, 1901, and all rights and privileges thereunder having been thereafter transferred and conveyed by said The Columbus Railway Company to the plaintiff by deed dated January 29, 1914. This franchise ordinance has been sometimes called and is here-

after referred to as the Blanket Franchise Ordinance, and a copy thereof is hereto attached, marked "Exhibit No. 1," and referred to for greater certainty.

(*b*) A second franchise granted by an ordinance entitled:

"An Ordinance, No. 17802,

Granting permission to The Central Market Street Railway Company, its successors and assigns, to construct, operate and maintain a single or double track street railway, with necessary sidetracks, curves, turn-outs and switches in the following streets of the city of Columbus, Ohio, towit: Rich street, Fifth street, Donaldson street, Livingston avenue, Mohawk street, Reinhard avenue, Jaeger street, Hanford street, Fourth street, Hosack street, Innis avenue and Parsons avenue to the south corporation line of said City of Columbus," said ordinance having been duly passed by the City Council of said city on January 21, 1901, and duly approved by the Mayor of said city on January 22, 1901, and all rights and privileges thereunder having been transferred and conveyed, after foreclosure proceedings, to the plaintiff under its former name of The Columbus Traction Company, by deed dated March 1, 1907. A copy of this second franchise ordinance, which is hereafter referred to as the
72 Central Market Franchise Ordinance, is hereto, attached, marked "Exhibit No. 2" and referred to for greater certainty.

5. In addition to said Blanket Franchise and said Central Market Franchise, certain other franchises were previously granted by said City of Columbus to predecessors in title of The Columbus Railway Company, as follows, towit:

On Main street, (formerly called Friend street) from High street to Rose avenue; on State street from High street to Grant avenue; thence in a northerly direction on Grant avenue to Oak street; thence on Oak street in an easterly direction to Sherman avenue, (formerly called Bruce street); on Long street from High street in an easterly direction to Mulberry street, and thence in a southerly direction on Mulberry street from Long street to Broad street; on Cleveland avenue in a northerly direction from Long street to Mt. Vernon avenue; thence in an easterly direction on Mt. Vernon avenue to Washington avenue; on West Broad street from High street to a point opposite the center of the east driveway to the Central Hospital for the Insane, (the same being the corporation line of the City of Columbus as established by ordinance of the City of Columbus, passed on or about May 18th, 1890); on Glenwood avenue in a southerly direction from Broad street to the Harrisburg pike; thence in a southwesterly direction on the Harrisburg pike to Greenlawn cemetery.

All of these last mentioned franchises were granted without limitation of time and are perpetual. They were duly and legally transferred and conveyed to said The Columbus Railway Company and by said Company conveyed to the plaintiff by the aforesaid deed dated January 29, 1914. The streets covered by these perpetual franchises are set forth in Section 20 of said Blanket Franchise

Ordinance, Exhibit No. 1, and the claim of said The Columbus Railway Company that they are perpetual is recognized by said city in said section but is not there admitted. Reference to said section which appears in Exhibit No. 1 is hereby made. All of the franchises mentioned in this paragraph and the last preceding paragraph were duly accepted by the grantees thereof respectively.

6. Under the terms and provisions of said Blanket Franchise Ordinance, Exhibit No. 1, the grantee and its successors and
73 assigns were required in due course as therein provided to issue and sell, and they did issue and sell, eight tickets for twenty-five cents, and to give, and they did give, universal free transfers thereon. The issue and sale of these tickets with universal free transfers was instituted April 1, 1912, and continued until August 20th, 1918, when said franchise was surrendered and cancelled by the plaintiff as hereinafter stated.

7. Under said Central Market Franchise ordinance, Exhibit No. 2, that company issued and sold eight tickets for twenty-five cents and gave universal free transfers, and continued to do this so long as it remained the owner of said franchise; and the plaintiff has continued the issuing and selling of eight tickets for twenty-five cents and giving such transfers ever since it became the owner of said franchise until August 20th, 1918, when said franchise was surrendered and cancelled by plaintiff as hereinafter stated.

8. The plaintiff in the operation of said system of street railway lines has developed and is conducting an extensive business in the carrying of street railway passengers in said city; and, during the year 1917, averaged 224,162 car rides per day, and during said year carried on its said lines in said city a total of 81,819,395 passengers, for which it received the sum of two and six tenths (2-6/10) cents per car ride, and no more. A person riding upon a transfer is counted as a passenger in the above figures. The plaintiff, by its said street railway system, including more than 110 miles of main track, supplies the only street railway service in said city of Columbus and its suburbs, except a very limited service furnished by interurban cars running at long intervals upon certain streets. Plaintiff also supplies power for war and industrial purposes and is the only commercial company furnishing electricity for such purposes in said city and its suburbs. Said city of Columbus and its suburbs contain a population of more than 250,000 and constitute a large industrial, manufacturing, military and railroad center in which are located numerous shops, factories and plants wherein more
74 than 25,000 persons now are, and for a long time will be, employed in the manufacture of munitions, clothing and a great variety of other war materials for use directly by the United States Government and for use by those who are furnishing war supplies to and for the Government, in the prosecution of the present war; also large railroad shops in which are employed many thousands of persons who are, and will continue to be, engaged in the manufacture and repair of railroad engines, cars and other equipment used and to be used by the United States Railroad Administration in its maintenance and operation of the railroad systems of the

United States; also a very large supply station for the storage and distribution of munitions and other supplies for Government use, at which are employed more than 2000 persons. A large majority of said employes in said shops, factories and plants, in said railroad shops and at said supply station, do and must depend upon the street railway service of the plaintiff as their means of transportation to and from their places of employment; and in said area is located also the Columbus Barracks in which are quartered more than 100,000 recruits per annum, who also are dependent upon said street railway service. The discontinuance or impairment of the plaintiff's street railway service would cause irreparable harm to the Government of the United States, to the City of Columbus and to all persons dependent upon said service.

9. The plaintiff has now invested in said street railway lines and equipment, on a conservative basis of investment and physical value, more than twelve millions of dollars. The plaintiff and its predecessors in title have from time to time issued and sold, and there are now outstanding in the hands of bona fide holders for value, mortgage bonds in large amounts, of which the sum of $7,295,000., at least, are chargeable against its street railway property, the annual interest charge upon which is more than $333,000.

75 10. The plaintiff, since it became the owner and operator of said system of street railway lines in the year 1914, has operated and managed, and is now operating and managing, said system efficiently, economically, conservatively, intelligently, safely and at the lowest possible cost consistent with adequate and sufficient service to the public. Notwithstanding such operation and management, the results have shown increased and increasing costs of operation and decreased and decreasing net revenue, which said increased and increasing costs of operation and decreased and decreasing net revenue have been caused by and are the direct result of the war in which the United States is now engaged.

The cost of coal necessary to generate the power required to operate said street railway lines has shown a marked increase. The plaintiff paid for coal for this purpose, in the year 1915, the sum of $60,164.; in the year 1916, the sum of $81,354.; and, in the year 1917, the sum $234,838. The plaintiff has also been obliged to increase materially the wages paid to its employes. In the year 1916, it paid in wages to its railway employes the sum of $806,336., and, in 1917, the sum of $887,984.

The net earnings derived from the operation of said street railway lines for the twelve months ending June 30, 1918, after deducting operating expenses, taxes, and a proper charge for depreciation, were $301,987., an amount insufficient by more than $31,000. to pay the interest on said $7,295,000. of bonds outstanding properly chargeable against plaintiff's street railway property, and barely enough to pay two and one-half (2½) per cent. upon the value of the property employed by plaintiff in furnishing street railway service to the people of Columbus.

11. During the month of June, 1918, street railway employes of plaintiff demanded a further increase in their wages, which plaintiff

could not pay, and thereupon said employes inaugurated a strike which caused plaintiff's said service to be entirely discon-
76 tinued for two days; and, after some negotiations, the controversy was referred to the National War Labor Board for decision, and that Board, on July 31, 1918, rendered its decision, the result of which is that plaintiff must increase the wages of its street railway employes more than fifty per cent. This increase in the wage account will increase the operating expenses of the street railway lines of plaintiff about $560,000. per year. Plaintiff therefore says that as the result of its said operations for the current year ending June 30, 1919, its gross earnings therefrom will fall short of paying its operating expenses, depreciation and taxes by approximately $250,000., and that there will be no earnings whatever with which to pay its said interest charges or to yield any return to plaintiff upon the value of its property employed in furnishing street railway service to the people of the City of Columbus.

12. On the 20th day of August, 1918, plaintiff surrendered and cancelled both said Blanket Franchise and said Central Market Franchise by notification in writing addressed to the City of Columbus, Ohio, the Mayor, City Council and City Clerk of said city. A copy of this written notice is hereto attached, marked "Exhibit No. 3" and referred to for greater certainty. Plaintiff asks that the facts set forth in such written notification be considered as part of this amended bill of complaint with the same force and effect as if repeated in full herein.

13. The plaintiff charges that the rates of fare prescribed by the terms and conditions of said two franchises last above mentioned were not either before or when said franchises were surrendered and cancelled as hereinbefore stated, and would not be if longer enforced against the plaintiff, sufficient to enable it to maintain its street railway property in good order and repair and to perform its duty as a public utility, and particularly to furnish the street railway service hereinbefore in paragraph 8 set forth; that the further
77 operation of plaintiff's street railway lines in said city under said two franchises referred to in this paragraph would be not only impracticable but impossible, both financially and otherwise, and that the enforcement of said rates of fare would violate the Fourteenth Amendment to the Constitution of the United States, in that said rates of fare are inadequate and confiscatory, and their enforcement would deprive the plaintiff of its property without due process of law. The plaintiff further charges, that by reason of the facts herein stated and by reason of the nature and character of said two franchises, it was fully warranted and justified in surrendering and cancelling them.

14. The plaintiff further charges that the defendants threaten, and will, unless restrained and enjoined by this court, attempt, to force it to continue to operate its street railway lines under said Blanket Franchise and said Central Market Franchise upon all of the streets of said city, including those streets covered by the aforesaid perpetual franchises, and to force it to continue to issue and sell eight

tickets for twenty-five cents and give universal free transfers; and that said threat of the defendants, if carried out, would compel the plaintiff to carry passengers upon its said lines at inadequate and confiscatory rates, in violation of said Fourteenth Amendment to the Constitution of the United States.

15. In anticipation of a controversy between said city on the one side and the plaintiff on the other over the right of the plaintiff to surrender and cancel the aforesaid two franchises and its right to put into force and effect its new rates of fare, the details of which are set forth in Exhibit No. 3 of this amended bill of complaint, the plaintiff is giving and will continue to give to its passengers paying the new rates of fare appropriate rebate checks representing the difference between the new rates of fare and those prescribed by the aforesaid two ordinances, and it will redeem said
78 rebate checks provided it shall be finally decided that the plaintiff was not justified in adopting said new rates of fare.

16. The plaintiff further says that the enforcement by the defendants or any of them of the aforesaid two franchise ordinances, or either of them, or an attempt by them to enforce the same, would cause the plaintiff immediate and irreparable injury, loss and damage; and that it has no adequate remedy at law in the premises.

17. The plaintiff further says that this amended bill of complaint presents a case within the jurisdiction of this court of equity in view of the controversies, confusion, risks and multiplicity of suits which would necessarily be occasioned by the resistance of the plaintiff to the enforcement of the inadequate and confiscatory rates of fare prescribed in the aforesaid two franchise ordinances, and that, in view of the public interests and the great number of people to be affected thereby, only a court of equity is competent to meet such an emergency and to determine once and for all and without a multiplicity of suits matters that affect not only individual persons, but also the interests of the entire community in the use of the public streets of the City of Columbus and in the administration of the affairs of the plaintiff, a quasi-public corporation, operating lines of street railway in said streets.

Wherefore, the plaintiff prays:

First. That the defendants and each of them make full, direct and true answer to the matters, all and singular, herein stated and complained of, but not under oath, this being hereby waived.

Second. That the defendants and each of them, their officers, servants, employes and agents, and their respective successors in office, be temporarily restrained and enjoined pending this suit, and, on final hearing, be forever enjoined from in any way forcing or compelling the plaintiff, or attempting to do so, to operate
79 its lines of street railway, or any of them, in the City of Columbus, under said Blanket Franchise ordinance or under said Central Market Franchise ordinance; from in any way forcing or compelling the plaintiff, or attempting to do so, to charge and collect only the rates of fare prescribed by the aforesaid two franchise ordinances for carrying passengers upon its lines of street railway

in said city; from in any way enforcing against the plaintiff, or attempting to do so, the aforesaid two franchise ordinances, or either of them, or any provision of either of them; from in any way interfering with the operation by the plaintiff of its lines of street railway on those streets in said city which are covered by the aforesaid perpetual franchises, said streets being the following, towit:

On Main street, (formerly called Friend street) from High street to Rose avenue; on State street from High street to Grant avenue; thence in a northerly direction on Grant avenue to Oak street; thence on Oak street in an easterly direction to Sherman avenue, (formerly called Bruce street); on Long street from High street in an easterly direction to Mulberry street, and thence in a southerly direction on Mulberry street from Long street to Broad street; on Cleveland avenue in a northerly direction from Long street to Mt. Vernon avenue; thence in an easterly direction on Mt. Vernon avenue to Washington avenue; on West Broad street from High street to a point opposite the center of the east driveway to the Central Hospital for the Insane, (the same being the corporation line of the City of Columbus as established by ordinance of the City of Columbus, passed on or about May 18th, 1890); on Glenwood avenue in a southerly direction from Broad street to the Harrisburg pike; thence in a southwesterly direction on the Harrisburg pike to Green Lawn cemetery;

and from in any way interfering with the plaintiff in its possession, control, management or operation of its said street railway property, or attempting to do so.

Third. That the plaintiff may have all such other and
80 further relief as to equity may seem meet and the nature of the case may require.

WILLIAM O. HENDERSON,
HENRY J. BOOTH,
HENDERSON & BURR,
BOOTH, KEATING, POMERENE & BOULGER,
Solicitors for Plaintiff, The Columbus Railway, Power & Light Company.

JOSEPH S. CLARK,
HENRY A. McCARTHY,
Of Counsel.

STATE OF OHIO,
Franklin County, ss:

Samuel G. McMeen, being first duly sworn, deposes and says that he is the President of the above named plaintiff, The Columbus Railway, Power & Light Company, which is a corporation, and is familiar with its business; that he has read the foregoing amended bill of complaint and knows the contents thereof; and that the facts

stated and allegations contained in said amended bill of complaint are true.

SAMUEL G. McMEEN.

Sworn to before me and subscribed in my presence by the said Samuel G. McMeen this 3rd day of September, A. D. 1918.

[SEAL.] HARRY M. RUNKLE,
Notary Public in and for Franklin County, Ohio.

81 EXHIBIT No. 1.

An Ordinance, No. 17,801.

Renewing to The Columbus Railway Company, for a term of twenty-five (25) years, its grants, rights, privileges and franchises, to maintain and operate its tracks and lines of street railroad upon the streets and avenues, and parts of streets and avenues, hereinafter mentioned, in the City of Columbus, Ohio, and prescribing the terms and conditions thereof, and repealing the provisions of any and all ordinances and resolutions, and parts of ordinances and resolutions, inconsistent with the terms of this ordinance.

(City Record Book 11, Page 524.)

Preamble.

Whereas, The Columbus Railway Company is the owner of and now engaged in operating certain lines of street railroad in the City of Columbus, Ohio, being the lines heretofore owned and operated by it, as well as those purchased from The Columbus Central Railway Company, and being the same lines enumerated in the title hereof; and

Whereas said several lines of street railroad owned by said The Columbus Railway Company, are held and operated by it under the authority of ordinances passed at various times, and for various periods, and containing various and inconsistent conditions as to the operation of lines of street railroad thereunder, and so limiting the franchises thereunder granted that they expire at different dates up to and including the year 1917; and

Whereas, In order to improve the service rendered by the said The Columbus Railway Company, it is desired that the several lines of street railroad now operated under separate and different franchise ordinances, may be operated by said company as one complete and entire system, thereby better accom-odating the public and facilitating the running of the cars of said company; and

Whereas, It is desired that the franchise rights of said The Columbus Railway Company to maintain and operate its tracks and lines of street railroad upon each and all of said several streets and avenues shall be made to expire at one and the same date; and

82 Whereas, it is desired that the burden to be borne by said The Columbus Railway Company in the way of payment of

cost of street cleaning, sprinkling, paving and repairs upon the several streets and avenues occupied by its lines, shall be uniform; and

Whereas, The provisions of the existing ordinances under which the said The Columbus Railway Company claims the right to maintain and operate its lines of street railway upon the several streets and avenues, prescribe different and varying rates of fare, and it is desired that there shall be uniformity in, and a reduction of, the rates of fare, and a general system of transfers, applicable to each and every part of the system of street railroads owned and operated by said The Columbus Railway Company; and,

Whereas, A renewal of the grants, rights, privileges and franchises of said The Columbus Railway Company, on the streets and avenues herein and hereinafter named, for said term of twenty five years, upon the conditions hereinafter prescribed in this ordinance, will be conducive to the public interests; now therefore,

Be it Ordained by the City Council of the City of Columbus, Ohio, as follows, towit:

Routes.

Section 1. That the franchises, rights and privileges of The Columbus Railway Company to maintain and operate its tracks and lines of street railroad, with all necessary switches, connections, turn-outs and other appliances suitable and proper for its use, together with the franchise, right and privilege to operate street railroad cars thereon, on the following streets and avenues, and parts of streets and avenues, in the City of Columbus, Ohio, viz:

On High Street from the south corporation line of the City of Columbus to its north corporation line, including the loop at Olentangy Park; on Chittenden avenue in an easterly direction, from High Street to The Cleveland, Cincinnati, Chicago and St. Louis Railway Company's tracks, and alongside said tracks in a southerly direction, forming what is known as the Fair Ground loop;

83 on Goodale street in an easterly direction, from High street to Fourth Street; on Chestnut street in an easterly direction from High Street to Fourth Street; thence on Fourth Street in a northerly direction to Naghten Street; thence on Naghten Street in an easterly direction to Neil Street; thence on Neil Street in a northerly direction to Mt. Vernon Avenue; thence on Mt. Vernon Avenue in an easterly direction to Cleveland Avenue; thence on Cleveland Avenue in a northerly direction to Buckingham Street; thence on Buckingham Street in an easterly direction to Jefferson Avenue; thence on Jefferson Avenue in a northerly direction to Leonard Avenue; thence on Leonard Avenue in an easterly and northeasterly direction to the north corporation line of the City of Columbus; on Mt. Vernon avenue in an easterly direction from Washington avenue to Taylor avenue; thence on Taylor Avenue in a northerly direction to Atcheson Street; thence on Atcheson Street in an easterly direction for a distance of two hundred (200) feet; on Livingston Avenue in an easterly direction, from High Street to Kelton Avenue, including the loop into the Driving Park as now built; on

Schiller Street in an easterly direction, from High Street to Parsons Avenue; on West Goodale Street in a westerly direction, from High Street to Neil Avenue; thence on Neil Avenue in a northerly direction to Eleventh avenue; on Fourth Street, from Livingston Avenue, in a northerly direction to Wyandotte Avenue; on Kelton Avenue, from Main Street, in a southerly direction to Livingston Avenue; on Rose Avenue, from Main Street, in a northerly direction to Fair Avenue; on Sandusky Street, in a southerly direction from Broad Street to Sullivant Avenue; thence on Sullivant Avenue, in a westerly direction, from Sandusky Street to Glenwood Avenue; on West Broad Street, from a point opposite the center of the east driveway of the Central Hospital for the Insane, (the same being the corporation line of the City of Columbus as established by an ordinance of the City of Columbus, passed on or about May 18th, 1890), to Hague Avenue; on Main Street in an easterly direction, from Rose Avenue to Alum creek; on Oak Street in an easterly direction, from Sherman Avenue (formerly called Bruce Street) to Fairwood Avenue; on Cleveland Avenue, from Buckingham Street northerly to
84 the north corporation — of said City of Columbus; on Neil Street from Naghten Street in a southerly direction to Spring Street; thence on Spring Street in a westerly direction to Front Street; thence on Front Street in a northerly direction to and over the Front Street bridge across the railroad tracks; thence along Park Street to Spruce Street; thence westerly on Spruce Street from Park Street to Dennison Avenue; thence on Dennison Avenue southerly to Montgomery Street; thence westerly on Montgomery Street to Harrison Avenue; thence on Harrison Avenue, northerly, from Montgomery Street to First Avenue; thence on First Avenue westerly, from Harrison Avenue to Pennsylvania Avenue; thence on Pennsylvania Avenue in a northerly direction from First Avenue to Fifth Avenue; on Front Street in a southerly direction, from Spring Street to Fulton Street; thence on Fulton Street in an easterly direction to Parsons Avenue; thence on Parsons Avenue in a southerly direction to the south corporation line; on Town Street from High Street in a westerly direction to Front Street; be and the same are hereby renewed to said The Columbus Railway Company, its successors and assigns, for and during the term of twenty-five years, from and after the passage of this ordinance; and the said The Columbus Railway Company is, and its successors and assigns are, hereby granted the franchise and right, and are hereby authorized and empowered to maintain and operate its lines of street railroad upon and over each and all of said streets and avenues, and parts of streets and avenues, aforesaid, for said period of twenty-five years, from and after the passage of this ordinance, upon and subject to each and every of the terms, conditions, stipulations and requirements hereinafter prescribed, and subject to the requirements of the general ordinances of the City of Columbus, Ohio.

To Connect Tracks.

Sec. 2. The said The Columbus Railway Company shall connect its tracks on High Street with the tracks of what was formerly known

as The Columbus Central Railway, at the intersection of High Street and Spring Street, at the intersection of High Street and Town Street, and at the intersection of High Street and Fulton Street, so that said lines may be operated as one system, in order to better accommodate the public; and said Company, shall have the right to connect, by suitable curves, tracks and appliances, its tracks at any points where they now intersect, or may hereafter intersect, at any time while this ordinance remains in force, under the direction and supervision, and according to plans and specifications to be approved by the Board of Public Works; and may maintain feed wire lines on any streets or avenues where they are now located, and elsewhere when needed, under like direction and supervision, and under plans to be approved by said board.

Provided, further, that said railroad company, in operating its lines of cars, shall make no change in the routes as now operated by it unless such change shall be first approved by resolution of the City Council of said City.

Street Repairs and Improvements.

Sec. 3. The said The Columbus Railway Company, shall keep in repair all that portion of said streets and avenues included within lines drawn one foot on the outside of the outer rails of its tracks; and shall pay for the cleaning, sweeping and sprinkling of said portion of the public way occupied by it and one foot on the outside of its outer rails, at the same rate and in the same manner required of abutting property owners for the residue of the public ways adjacent to said strip. If the City Council at any time orders the improvement of the roadway of any of said streets and avenues, by laying down thereon a pavement of any kind, said company shall, at its own expense, improve that portion occupied by its tracks and one foot on the outside thereof, with the same character of materials; or, if on the said streets or avenues a pavement has already been laid, and an assessment therefor placed on the tax duplicate, said company shall pay to the Director of Accounts of the City of Columbus, Ohio, such portion of the assessment for said improvement as the space occupied by said tracks and one foot on the outside of the outer rails bears to the entire width of the improved roadway; such sum to be by the Director of Accounts paid to the City Treasurer, and by him to be credited to any portion of the assessment made for the cost of such improvement, remaining due from, and unpaid by, the several abutting property owners; provided, that if in any case the amount so paid shall exceed the unpaid assessments, the excess shall be by the Director of Accounts paid to the abutting property owner entitled thereto.

Pavements.

Sec. 4. The pavements provided for in this ordinance shall be laid at such height or grade as may be fixed or determined by the Board

of Public Works, and shall, during the existence of this ordinance or grant, or any extension, amendment or renewal thereof, be kept in repair under the direction and supervision of such officers as may be from time to time vested by law or ordinance of the City Council with the control and supervision of the Public Highways and Works of said City; and on the failure of the company to make said repairs within thirty (30) days after receiving notice so to do from the City Council, the City Council may make the same or cause the same to be done, and said City of Columbus shall collect all the cost and expense thereof from said Company, and the entire amount of such cost and expense shall constitute a lien and charge upon the property and franchise of said Company the same as if formally levied and assessed as in the case of other municipal improvements. Whenever the said railroad is being put down on any unimproved street or streets, said Company shall grade the street or streets from curb to curb at its own expense on a level with its tracks.

Damage Indemnity.

Sec. 5. Said Railway Company shall, at all times hereafter, defend, indemnify and keep harmless the City of Columbus from any and all damages, lawful claims and demands for injuries to persons or property, the cost and expense of which said city may be subjected to or made liable for, by any proceedings at law or in equity, or otherwise, growing out of the grant of the privileges in this ordinance granted or out of the exercise or enjoyment of the same by said Company, or out of the failure of said Company to construct and keep in repair the pavement or other improvement by it herein required, or authorized, to be constructed and maintained; and said company may, at its own cost, defend against such actions, either in its own name or in the name of the City of Columbus.

87 Temporary Track Removals by City.

Sec. 6. The said City of Columbus shall have the right to temporarily remove or obstruct, or authorize the same to be done, any portion of the railroad tracks of said company, whenever and wherever it shall be necessary in laying down or repairing water pipes, gas pipes, sewers, drains, gutters or cisterns, or to use hose or any other apparatus necessary to be used in extinguishing fires, or any other public work or improvement required to be done by said city, not disturbing the running of cars where it can be avoided, without incurring any liability for damages to said company.

Speed and Control of Cars.

Sec. 7. Said Company shall at all times conform to such reasonable rules and regulations as are, or may hereafter be prescribed by ordinance, as to the rate of speed it may run its cars; and when its cars are about to start, and when in motion, if reasonable cause there-

for exist, warning shall be given by gong or otherwise, to notify persons of immediate or approaching danger. No car shall be started or put in motion while any passenger is in the act of entering the same or alighting therefrom. Cars running in the same direction shall not approach nearer to each other than one hundred feet, unless from unavoidable necessity or on switches or turnouts. Gongs shall be sounded as a warning on all cars approaching each other from opposite directions, and on each car approaching street intersections, which the car is to pass from one street to another, where there are buildings to prevent persons on foot or persons in other vehicles on the street from seeing the approaching car; the warning last aforesaid to be given at a distance of not less than fifty feet from such street corner and from time to time until the car reaches such intersection.

Sewer and Water Pipes.

Sec. 8. The said City of Columbus shall not be liable in any
88 way to said company for damages it may sustain from the breaking or overflow of waters from, any sewer or drain, or from the breaking of any water pipe or gas pipe by reason of any change in the grade of said streets; and said company shall so construct its tracks as to fully protect from damage thereby any and all sewers, water pipes and mains, gas or other pipes running beneath the surface of the streets.

Snow and Ice.

Sec. 9. In case it becomes necessary for said company to remove snow and ice from its tracks on said streets, it shall not be left in such manner as to interfere with or impede travel or render the street dangerous.

Conductors and Motormen—Exercise of Caution.

Sec. 10. The conductors in charge of cars shall not allow any lady or child to enter or leave any car while in motion; and the conductors and motormen shall keep a vigilent watch for all teams, carriages, persons and obstructions upon or near the track, and upon first appearance of danger, shall give warning and stop the car if necessary, to prevent accident; and the motormen must always be on the front platform while the car is in motion.

Motive Power and Safe Equipment.

Sec. 11. Permission is hereby given said company to operate its entire lines of street railroad with any and all extensions that may hereafter be made thereto, by electricty, or such other motive power, other than animal or steam power, as shall be acceptable to the city. Said Company shall have the right to erect and maintain iron or wood

poles, painted and neat in appearance, wires, fixtures and conduits, and any and all other appliances or appurtenances that in the opinion of the city shall be found necessary. At and after dark all cars running shall be lighted and provided with suitable signal
89 lights. All cars shall be kept clean, and when the temperature is below 35 degrees Fahrenheit, shall be heated. No car shall be allowed to remain standing upon the line of any route for passengers or any other purpose so as to impede any other vehicle, but shall be subject to such police regulations as are or may be prescribed for any other vehicles so far as they may be applicable. No car or cars shall be used on such railroad if worn out, broken, or so constructed, or kept in such a condition as to imperil the lives, limbs or health of the passengers; provided, that if any time during the life of this grant or any extension thereof, said city shall require, by ordinance, all trolley wires or other elec ric wires in the principal business district of said city to be placed in conduits under ground, said company shall within a reasonable time after the passage of such ordinance, which time shall be fixed by said city, place all its trolley wires, and food wires within said district, under ground.

Wires and Poles.

Sec. 12. In the erection or placing of wires or conduits and in the use of any and all other appliances and appurtenances found necessary to operate said company's lines of railroad, a plan of the same, showing all poles, wires and other appliances or appurtenances that said company shall desire to use, shall be submitted to and approved by the Board of Public Works. Said City shall have the right to fix the height of all wires and poles above the street, and the size and location of all poles and conduits in the street, to determine the places in the streets where any and all tracks, appliances and appurtenances shall be located, and to establish such regulations with reference to the Public Safety and protection as the city shall from time to time deem necessary and proper.

90 Interurban Lines.

Sec. 13. The said city hereby reserves the full right and power at any time during the life of the grant herein made to grant to any other company, corporation or individual, engaged in operating an interurban railroad to jointly use with said The Columbus Railway Company any track or part thereof owned or operated by said The Columbus Railway Company, which may be necessary to enable the cars operated on such interurban railroad to pass by the most direct route to and from High Street, if said cars shall enter said city west of High Street, and to and from High Street if said cars shall enter said city east of said High Street, and to and from Chestnut Street, if said cars shall enter said city north of Chestnut Street and to and from Town Street, if said cars shall enter said city south of Town Street, upon equitable terms of payment therefor to said The Columbus Railway Company, taking into consideration the value, cost of construction

and maintenance of the track or tracks and overhead construction so jointly used, the amount paid by said The Columbus Railway Company, its predecessors, successors and assigns, whether to said city or to abutting property owners, for street paving and the cost of maintaining the same upon such street or streets so occupied, the pro rata amount of taxes and assessments paid on such track or part thereof, and the cost of power used in operating such interurban cars. If such right to joint use be granted by said city and if terms of compensation therefor cannot be agreed upon by said The Columbus Railway Company and the corporation, company or individual applying for such joint use, within sixty days after such grant is made by said city, the terms of compensation therefor shall be submitted to arbitration, one arbitrator to be chosen by said The Columbus Railway Company, one by the corporation, company or individual applying for such joint use, these two to select a third arbitrator. The decision of said arbitrators, in the absence of fraud, accident or mistake of law or fact, shall be conclusive on both parties. But neither
91 such arbitration nor any appeal therefrom shall in any way delay such joint use and occupation, when so granted as aforesaid, provided such grantee of the right to such joint use shall first secure to the satisfaction and acceptance of said The Columbus Railway Company the payment of the compensation which may be awarded by said arbitrators. No interurban cars shall be operated over any track or tracks, or parts thereof of said The Columbus Railway Company under and by virtue of the foregoing provision of this ordinance authorizing said city to compel such joint use, more frequently than one car each way every thirty minutes. Said The Columbus Railway Company is hereby authorized and empowered to make and carry out contracts or traffic arrangements, for the use of any of its tracks or any part thereof, by interurban cars of a gauge different from that of its own cars, and, with the consent of said city to permit the laying and the use of a third rail for said purpose; but it shall not permit such joint use or the laying of such third rail except over such route as may be necessary to enable such interurban cars to reach, and return from, the tracks now known as the interurban loop as now existing or hereafter modified. It is intended and understood that the phrases "interurban cars" and "cars operated on such interurban railroads" refer to and mean only such cars as shall be operated at regular intervals between said City of Columbus and some other city, or some village, at least ten miles distant from the limits of said City of Columbus, where such interurban cars enter the same. Any grant or traffic arrangement made by said The Columbus Railway Company to any other corporation, company or individual, to use any of its tracks or any part thereof, shall be subject to all rules and regulations of said City now in force, and all reasonable rules and regulations which may hereafter be adopted by said city, concerning the rate of speed and headway, and the operation, character, lighting and heating of all cars so operated under such grant or traffic arrangement for such joint use, and for the comfort and safety of passengers carried thereon.

92 Interurban Passenger and Freight Cars.

Sec. 14. Neither said The Columbus Railway Company nor any other person, company or corporation which may hereafter obtain the right to use any of its track or tracks, shall move along or over the same any passenger cars in trains of more than three cars per train, including the motor car.

Freight cars shall not be moved along or over the whole or any part of the tracks of the said The Columbus Railway Company in said City, except upon the streets and avenues or parts of streets and avenues hereafter designated by ordinances which may hereafter be passed by the City Council of said city granting such permission; provided, however, that said company may transport over any of its lines, material to be used by it in construction of repairs and extensions.

Conductors and Motormen—Duties.

Sec. 15. At all times when any car is in use a motorman in charge of such car shall be stationed on the front platform of the motor car; and there shall be a conductor on each car, whose duty it shall be to collect fares and to look out for the safety and comfort of passengers.

Electrolysis.

Sec. 16. In the construction of its trolley wires, said company shall safeguard the water pipes, and any other system of iron pipes which may be maintained by said city, by using what is known as the "double trolley system," or such other device, to be approved by the Board of Public Works, as shall effectually protect such pipes from injury by electrolysis.

To Expend a Million Dollars.

Sec. 17. Said company shall, as rapidly as the requirements of its railroad system and the efficient service of the public demands,
93 during the life of this grant, expend not less than $1,000,000.00 in extensions and betterments, and shall, at all times during the life of this franchise, furnish, upon all its lines, efficient and adequate service and a sufficient number of first class, commodious cars for the accommodation of its patrons. The City Council of said city may, by ordinance, require such reasonable extensions of such of the lines operated by said company as may be necessary for the efficient operation of such railroad and for the convenience of the public, whenever along the line of any such proposed extension and between parallel lines four hundred feet distant on each side thereof, there shall be when such extension is ordered, not less than one hundred and fifty separate dwellings, used and occupied as dwellings, per mile or in like proportion for any less distance; but said company shall not be required to construct more than one mile of extensions within one calendar year.

It is expressly provided that any and all franchise rights to operate extensions which may hereafter be granted to said company, shall expire at the expiration of said period of twenty-five years.

Grooved Rails and Kind of Pavement.

Sec. 18. In making extensions on paved streets, and in relaying tracks on paved streets, grooved or other modern and improved rails of weight and pattern to be approved by the Board of Public Works of said city shall be laid; such rails shall be laid upon foundations of concrete or other material, and according to plans to be approved by said Board.

Whenever any unpaved street, or any part of any street, along which said company operates lines of street railroad, shall hereafter be improved by laying down thereon a pavement, said company shall relay its tracks thereon in the manner aforesaid, and shall pave the portion of such street as provided in sections 4 and 5 of this ordinance.

94 Cash Deposits for City Repairs.

Sec. 19. Said Company shall keep on deposit with the said city at all times the sum of one thousand dollars as an emergency fund, against which the city may draw, upon vouchers drawn by the Director of Accounts, with the approval of the Board of Public Works, for the cost and expense of any repairs made by said city, which, by the terms of this ordinance, should have been made by said company, and which said company after due notice and reasonable opportunity has failed or neglected to make within the time prescribed by this ordinance; and said company shall at once replace any portion of said fund, expended as aforesaid so as to keep on deposit at all times the amount of one thousand dollars; and at the expiration of the time granted by this ordinance any sum remaining in said fund due to said company shall be refunded.

Perpetual Franchises.

Sec. 20. The grants and provisions hereinbefore made and contained for the renewal of the franchise of the said The Columbus Railway Company on the streets and avenues hereinbefore mentioned in section 1 of this ordinance, shall in all respects apply to the grants, rights, privileges and franchises of the predecessors in title of said The Columbus Railway Company, to construct, maintain and operate lines of street railway on Main Street, (formerly called Friend Street) from High Street to Rose Avenue; on State Street from High street to Grant avenue; thence in a northerly direction on Grant avenue to Oak street; thence on Oak street in an easterly direction to Sherman avenue, (formerly called Bruce street); on Long street from High street in an easterly direction to Mulberry street and thence in a southerly direction on Mulberry street from Long street to Broad street; on Cleveland avenue in a northerly direction from

Long street to Mt. Vernon avenue; thence in an easterly * * * direction on Mt. Vernon avenue to Washington avenue; on West * * * Broad street from High street to a point opposite the center of * * * the east driveway to the Central Hos-
95 pital for the Insane, (the same being the corporation line of the City of Columbus as established by ordinance of the City of Columbus, passed on or about May 18th, 1890); on Glenwood avenue in a southerly direction from Broad street to the Harrisburg pike; thence in a southwesterly direction on the Harrisburgh pike to Green Lawn cemetery; as fully as if the routes and streets and avenues mentioned in this section were specifically mentioned and included in the first section of this ordinance, if, and so far as, the franchises in the streets and avenues mentioned in this section or either of them or any part thereof shall hereafter be judicially declared by a court of competent jurisdiction, or by any appel-ate court to which any suit brought to test any or all of said franchises shall be brought, may be carried by proceedings in error or on appeal, not to be franchises in perpetuity.

It is expressly provided that nothing contained in this ordinance is intended, nor shall anything herein be construed to be, a concession by said City of Columbus of the validity of any claim of said company to perpetual franchises to operate lines of street railroad in all or any of the streets and parts of streets named in this section.

It is further expressly provided, that nothing contained in this ordinance shall be pleaded or considered to be a bar to any suit or suits which may hereafter be brought in any court or courts of competent jurisdiction, seeking to test the validity of any claim or claims to said company to perpetual franchises to operate any line or lines of street railroad upon any of the streets or parts of streets mentioned in this section.

Fares and Transfers.

Sec. 21. Said The Columbus Railway Company, its successors and assigns, shall be entitled to charge fares within the corporate limits of said city during the term herein provided at the following rates, and no more, to-wit: For a single cash fare, 5 cents; for tick-
96 ets in packages of seven, twenty-five cents, until the annual gross receipts from all fares received on all lines operated by said company within said city amount in the aggregate to the sum of one million, seven hundred and fifty thousand dollars ($1,750,000.00); and after said annual receipts amount to said sum, for tickets in packages of eight, twenty-five cents, all of which tickets shall be good for use from the time the regular cars start in the morning until the regular cars quit running at or shortly after midnight; for single fares between the hours when regular cars quit running at or shortly after midnight until such cars commence running in the morning, during the first five years of the term granted by this ordinance, ten (10) cents, and thereafter five (5) cents.

No charge shall be made for children under six years of age at-

tended by parent or other person. Children over six years of age and under ten years of age shall be carried for 3 cents each.

Tickets for the rates required by this ordinance shall be kept on sale and sold at the principal office of said company in the City of Columbus during business hours and at all times by conductors on the regular cars of said company at the rates for tickets aforesaid. For each cash fare and for each ticket said company shall, on demand of the passenger tendering the same, issue to such passenger a transfer slip good for one continuous passage in said city on any other line of street railroad owned or operated by said company which connects with, diverges from, or crosses, the line on which said transfer was issued, if presented within fifteen minutes after the time designated by punch marks on transfer slip, which time so designated shall be a reasonable arriving time of car at any one of the transfer points of the line by which such transfer was issued.

For each five cent cash fare said company shall, on demand of the passenger tendering the same, issue to such passenger a transfer slip good for one continuous passage over any other line of electric railway now constructed or hereafter constructed or operated in said City, by any person, company or corporation, other than
97 The Columbus Railway Company, whose charges for transfer slips is not less than that of said The Columbus Railway Company, and whose line of railroad connects with, diverges from, or crosses any line of road of said The Columbus Railway Company; provided, that the company, corporation or person operating such other line as aforesaid shall be required by said city to accept said transfer slips for such passage, and to exchange transfers with said The Columbus Railway Company; and said The Columbus Railway Company shall be required to accept, from all passengers transferred from such lines of other roads, similar transfer slips good for continuous passage over its lines in said city, if presented in the time above provided; and the receipts from the passengers purchasing such transfer slips, so issued as aforesaid by said The Columbus Railway Company, and by any other person, company or corporation, operating lines which cross the same or connect therewith, shall be equally divided between the operators of said lines of railroad respectively.

No free transportation shall be furnished except to officers and employes of the said railroad company, and, when permitted by law, to policemen and firemen of said city wearing their official uniform.

All Night Cars.

Sec. 22. Between the hours of 5:30 a. m. and 12 o'clock midnight cars shall be run at intervals not to exceed the following, viz: High Street, between north and south corporation lines, 10 minutes; Schiller street and High street, to north corporation line, 10 minutes; Long street, 6 minutes; Main and Neil avenue, 6 minutes; State and Oak streets, 7 minutes; Livingston avenue and Fourth street, 10 minutes; Leonard avenue and Camp Chase, 11 minutes; Mt. Vernon avenue and cemetery, 11 minutes; Central market line, 15 minutes;

Pennsylvania and Parsons avenue, 10 minutes. Between the hours of 12 o'clock midnight and 5:30 o'clock a. m., cars shall be run, starting at 1 o'clock a. m., and continuing until 5 o'clock
98 a. m., hourly upon High street, West Broad street, and on two lines to be hereafter designated by said city, running easterly from High street.

Expiration.

Sec. 23. Upon the expiration of the term of the renewal franchise herein granted said company shall, unless a further renewal be granted by said city, remove all its tracks, wires and other appliances from the streets and avenues of said city and leave the portion of each and every street occupied by its lines in good condition, corresponding in finish and material with the remainder of such streets and avenues.

Sec. 24. The terms "the city" and "said city" whenever used in this ordinance, unless the context clearly indicates a different intention, are intended and shall be construed to mean The City of Columbus, Ohio; and the terms "the company" and "said company" and "The Columbus Railway Company" whenever used in this ordinance unless the context clearly indicates a different intention, are intended and shall be construed to mean The Columbus Railway Company, its successors and assigns.

Sec. 25. If at any time in the future the laws of Ohio shall be so amended as to do away with the Board of Public Works as now constituted by law, then and in that event the powers and duties herein conferred upon and required of the Board of Public Works shall be performed by such city officer or board as shall, by law, be entrusted with the duties and powers now performed by such board. If in the future the laws shall be so amended as to do away with the Director of Accounts of said city as now constituted by law, then the powers and duties conferred upon the Director of Accounts under this ordinance shall be exercised by such officer of the city as shall by law succeed to his powers and duties.

99 Repeal and When in Effect.

Sec. 26. The provisions of any and all ordinances and resolutions, and parts of ordinances and resolutions, heretofore passed or adopted by the City Council of said city, which are inconsistent with the terms of this ordinance, are hereby repealed and rescinded.

Sec. 27. This ordinance shall take effect and be in force from and after its passage and legal publication, and the filing by said The Columbus Railway Company, with the City Clerk of said city, of its acceptance in writing of each and all of the terms, provisions and requirements of this ordinance; provided, however, that if said company shall fail to file such written acceptance within thirty days after the passage of this ordinance, then this ordinance shall be void and of no force and effect, but if said company shall be prevented from accepting the terms, provisions and requirements of this ordi-

nance by injunction or other judicial or legal process, or *of* its acceptance thereof shall be delayed or postponed in the manner or by the means aforesaid, said Company may accept the terms, provisions and requirements of said ordinance at any time within thirty days after the expiration of the period during which said acceptance shall have been prevented or delayed as aforesaid, in which event said acceptance shall have the same effect as if the same had been filed within thirty days after the passage of this ordinance.

Passed February 4, 1901.

JAMES J. THOMAS,
President of the City Council.

Approved by the Mayor, February 6, 1901.

Attest:
JOHN T. BARR, *City Clerk.*

100 EXHIBIT No. 2.

An Ordinance, No. 17802.

Granting permission to The Central Market Street Railway Company, its successors and assigns, to construct, operate and maintain a single or double track street railway, with necessary sidetracks, curves, turn-outs and switches in the following streets of the city of Columbus, Ohio, to-wit: Rich street, Fifth street, Donaldson street, Livingston avenue, Mohawk street, Reinhard Avenue, Jaeger street, Hanford street, Fourth street, Hosack street, Innis avenue and Parsons avenue to the south corporation line of said City of Columbus.

(City Record Book 11, Page 516.)

Whereas, Application has been made in writing to the Board of Public Works, and the City Council of the City of Columbus, Ohio, for a franchise to construct, operate and maintain a street railway upon Rich street, Fifth street, Donaldson street, Livingston avenue, Mohawk street, Reinhard avenue, Jaeger street, Hanford street, Fourth street, Hosack street, Innis avenue and Parsons avenue, to the south corporation line of the said city; and

Whereas, Notice of said application has been published according to law; and

Whereas, Bids have been advertised for and received by said city for the construction of a railroad upon said streets as required by law; and

Whereas, The Central Market Street Railway Company bid and agreed to carry passengers upon said proposed railroad along said route at a lower rate of fare than any other bidder; and

Whereas, The consent in writing of the owners of the majority of the feet front of the lots and lands fronting and abutting upon said parts of said streets has been obtained and filed with the Clerk

of said city for the construction, operation, and maintenance of said street railroad. Now, therefore,

Be it ordained by the City Council of the City of Columbus, Ohio, as follows, to-wit:

Section 1. That The Central Market Street Railway Company, its successors and assigns, be and is hereby granted permission and authorized to construct, operate and maintain a street rail-
101 way in and upon the following streets in the city of Columbus, Ohio, to-wit: In Rich street from Third street to Fifth street; in Fifth street from Rich street to Donaldson street; in and across Donaldson street and Livingston avenue to Mohawk street; in Mohawk street from Donaldson street and Livingston avenue to Reinhard avenue; in Reinhard avenue from Mohawk street to Jaeger street; in Jaeger street from Reinhard avenue to Hanford street; in Hanford street from Jaeger street to Fourth street; from Hanford street to the south corporation line of said city; in Hosack street from Fourth street to Parsons avenue; in Innis Avenue from Fourth street to Parsons avenue; in Parsons avenue from Innis avenue to the south corporation line of said city in accordance with the provisions of this ordinance; with permission to connect the track or tracks on said streets with each other, and with the track or tracks of The Columbus, London and Springfield Railway Company, and The Columbus, Buckeye Lake and Newark Traction Company at Rich and Third streets, by means of a curve or curves.

Sec. 2. Said grantee and assigns shall have the right to lay down a single or double track on the route described in section 1 of this ordinance, with switches and turn-outs, wherever switches and turn-outs may be necessary or convenient, and to connect said track or tracks by curve or curves with its other track or tracks, and with the tracks of the other intersecting standard gauge street railroads within the city limits of Columbus, Ohio.

A plan showing the location of such switches, tracks and turn-outs shall be submitted to the Board of Public Works of said city and approved by it, before the construction thereof.

Sec. 3. That said track shall be of a standard gauge of four feet and eight and one-half inches in width, and on paved streets the rails shall be standard patterns, grooved rails, not less than 70 pounds to the yard, to be approved by the Board of Public Works, and upon such foundation as said board shall direct. The space between the inner rails where the double tracks are laid shall not exceed
102 five feet, measured from rail to rail.

Sec. 4. Said grantee, its successors and assigns, shall keep in repair all that portion of said streets and avenues which is included within lines drawn one (1) foot outside of the outer rails of its said tracks; and shall pay for the cleaning, sweeping and sprinkling of said portion of the public way occupied by it, and one foot on the outside of its outer rails, at the rate and in the same manner required of the abutting property owners for the residue of the public ways adjacent to the said strip. If the City Council at any time orders the improvement of the roadway of any of said

streets, avenues or alleys by laying down thereon a pavement of any kind, or a macadam roadway, said company shall, at its own expense, improve that portion occupied by the tracks of said road and one foot outside thereof with the same character of material as is used on the remainder of the street, and shall relay its or their tracks on any street or streets so paved with grooved rails on foundations as specified in section 3 hereof; or if on any of the said streets or avenues a pavement has already been laid, and an assessment therefor placed on the tax duplicate, said company shall pay to the Director of Accounts of the City of Columbus, Ohio, a proportion of the present value of the pavement covered by the assessment for said improvement as the space occupied by said tracks and one foot on the outside of the outer rails thereof bears to the entire width of the improved roadway. Such sum to be by the Director of Accounts paid to the City Treasurer, and by him to be credited to any portion of the assessment made for the cost of such improvement, remaining due from and unpaid by, the several abutting property owners. Provided, that if in any case the amount so paid shall exceed the unpaid assessments, the excess shall be by the Director of Accounts paid to the abutting property owner entitled thereto. The present value of the street paving referred to in this section to be determined by the Board of Public Works in consultation with the officers of said railway company, and in case a satisfactory price cannot
103 be agreed upon the matter is to be settled by arbitration according to the provisions of the Revised Statutes of Ohio.

Sec. 5. The pavement provided for in this ordinance shall be laid at such height of grade as may be fixed or determined by the Board of Public Works, and shall, during the existence of this ordinance, or grant, or any extension, amendment, or renewal thereof, be kept in repair under the direction, or under the supervision and direction of such officers as may be from time to time vested by law, or ordinance of the City Council, with the control and supervision of the public highways and works of the city, and on the failure of the company to make said repairs within thirty (30) days after receiving notice so to do from the Board of Public Works, the said board may make the same, or cause the same to be done, and the said City of Columbus shall collect all the cost and expense thereof from said company and the entire amount of such cost and expense shall constitute a lien and charge upon the property and franchise of said company, the same as if formally levied and assessed as in the case of other municipal improvements. That whenever the said railway is being put down on any unimproved street or streets said grantee and assigns shall grade the street from curb to curb at its own expense, and on a level with its tracks.

Sec. 6. Said grantee and its assigns shall at all times hereafter defend, keep harmless and indemnify the City of Columbus from any and all damages, lawful claims, and demands for injuries to persons or property, cost and expenses to which said city may be subjected or made liable by any proceedings at law or in equity growing out of the grant of the privileges in this ordinance granted, or out of the exercise or enjoyment of the same by said grantee and

its assigns, or out of the failure of said grantee and assigns, to construct or keep in repair the pavement or other improvements by them herein required to be constructed and maintained; and said grantee or its assigns may, at its own cost, defend against such action, either in its own name or in the name of the City of Columbus.

Sec. 7. The said City of Columbus shall have the right to
104 remove or obstruct, or authorize the same to be done, any portion of said railroad track wherever it shall be necessary in laying down or repairing water pipes, gas pipes, sewers, drains, gutters or cisterns or by hose or any other apparatus necessary to be used in extinguishing fire, or any other public work or improvement required to be done by said city, not disturbing the running of cars where it can be avoided, without incurring any liability for damage to said grantee.

Sec. 8. The said City of Columbus shall not be liable in any way to said grantee or its assigns, for damages it may sustain from the breaking or overflow of water from any sewer or drain, or from the breaking of any water pipe or gas pipe, or by reason of any change in the grade of said streets, and said grantee and assigns shall so construct the track as to fully protect from damage thereby any and all sewers, water pipes and mains, gas or other pipes running beneath the surface of the streets. Whenever the surface drainage of any street (whether improved or unimproved) be obstructed by the laying of said track the said grantee or its assigns shall construct all catch basins and pipe lead-offs, or relay so much of the paved roadway of said street at its or their expense, as in the opinion of the said Board of Public Works may be necessary to overcome the effects of such obstruction.

Sec. 9. In case it becomes necessary for said grantee and its assigns to remove the snow and ice from the tracks on said streets, it shall not be left in such a manner as to interfere with or impede travel or render the streets dangerous.

Sec. 10. The conductors, drivers or motormen of cars shall not allow any woman or child to enter or leave any car while in motion, and shall keep vigilant watch for all teams, carriages, persons and obstructions upon or near the track, and upon the first appearance of danger thereto, shall give warning and stop the car, if necessary, to prevent accident, and either the driver, conductor or motorman must always be on the front platform while the car is in motion.

Sec. 11. No car shall be run at a greater rate of speed than twelve miles an hour. Cars driven in the same direction shall not
105 approach nearer to each other than one hundred feet, unless from unavoidable necessity, or on switches or turn-outs. Said grantee and assigns shall at all times conform to such general rules and regulations as may from time to time be made by the council as to the rate of speed it may run its cars, and while the cars of said grantee and assigns are in motion or about to start, warning shall be given by bell or otherwise, to notify persons of any immediate or approaching danger.

Sec. 12. Permission is hereby given said grantee and its assigns to operate its entire line of street railway with any and all extensions

that may hereafter be made thereto, by electricity or other motive power, other than animal or steam power, as shall be acceptable to the city for such purposes. Said grantee and its assigns shall have the right to erect and maintain iron or wood poles, painted and neat in appearance, wires, fixtures and conduits, and any and all other appliances or appurtenances that in the opinion of said city shall be found necessary. At and after dark, all cars running shall be lighted and provided with suitable signal lights, and cars shall be kept clean, and when the temperature is below 35 degrees, Fahrenheit, shall be heated. No car shall be allowed to remain standing upon the line of said route for passengers or any other purpose, so as to impede any other vehicle, but shall be subject to such police regulations as are, or may be, prescribed for other vehicles, so far as they may be applicable. No car or cars shall be used on such railroad if so worn, broken or constructed, or kept in such condition as to imperil the lives, limbs or health of the passengers; provided, that if at any time during the life of this grant or any extension thereof said city shall require by ordinance all trolley wires or other electric wires in the principal business district of said city to be placed in conduits under ground, said grantee and its assigns shall within a reasonable time after the passage of such ordinance, and which time shall be fixed by said city, place all its trolley and feed wires within said district under ground. In the construction of its system of trolley wires said company and its assigns shall guard against injury to the water and other pipes of said city from electrolysis by
106 the use of what is known as the "double trolley system," or such other device as may be approved by the Board of Public Works for that purpose.

Sec. 13. In the erection and placing of wires or conduits and in the use of any and all other appliances or appurtenances found necessary to operate its line, a plan of the same, showing all poles, wires and other appliances or appurtenances that said grantee and its assigns shall desire to use, shall be submitted to and approved by the Board of Public Works. Said city shall have the right to fix the height of all wires and poles above the street, the size and location of all conduits in the street, and the distance at which poles shall be apart, and to regulate the places within the street where any and all tracks, appliances and appurtenances shall be located and to establish such regulations with reference to public safety and protection as the said city shall from time to time deem necessary and proper.

Sec. 14. Cars shall be run by said grantee, and its assigns, at no longer intervals than fifteen minutes, unless prevented by unavoidable casualty, and shall be operated regularly between 8 a. m. and 10 p. m. on Sundays, and between 5:30 a. m. and 11:30 p. m. on all other days; and said grantee and its assigns shall not run a train of more than three cars, including the motor, on any of its lines in said city.

Sec. 15. The Central Market Street Railway Company, and its assigns, shall be entitled to charge fares as follows, and no more: For Single fare within the corporate limits of said city, five cents; for seven tickets, twenty-five cents. No charge to be made for children under six years of age, attended by parents or other person in

charge of them. Children over six and under twelve years of age shall pay three cent fares. For each five cent fare said company and its assigns, shall on demand, at the time of payment of said fare, issue a transfer slip good for continuous passage within said city, over any line of railway connecting with or intersecting its line of railway, now or hereafter built, if presented within twenty minutes after leaving the car of the issuing company, providing said transferee lines be required by said city to accept such transfer slip for such passage. And the said The Central Market
107 Street Railway Company, and its assigns, shall be required to accept from any such connecting or intersecting line, similar transfer slips, which shall be good for immediate continuous passage over its line within said City of Columbus. The fares paid, for which such transfers are issued, shall be divided equally between the operators of the two connecting or intersecting lines of railways over which said fares are paid.

Sec. 16. Said grantee and its assigns, shall have the right to carry passengers, United States mail, packages, express matter, baggage, and freight, on its said lines in said City of Columbus, but shall not have the right to move along its lines within the business district of said city any steam railroad freight or passenger cars, and all cars of said company and its assigns carrying packages, express matter, baggage and freight, shall be loaded and unloaded in a depot or a place to be hereafter designated by said company and its assigns on lands abutting on its said line, and shall have the right and permission to put in proper curves, switches and tracks on said streets and avenues from its said lines to its said depot across the sidewalk in front thereof to said depot at any point along its said line in said City of Columbus. Said company or its assigns may select for its use in loading, unloading and storing all kinds of freight and its cars, except live stock, and shall have the like right and permission to put in proper curves, switches and tracks on said streets and avenues from its said lines to said depot across the sidewalk in front thereof, at any point along its said lines in the said City of Columbus.

Sec. 17. Said the Central Market Street Railway Company, or its assigns, shall have the right to connect its lines with the standard gauge loop in the central portion of said city, and shall have the right and permission to use and occupy said loop under the terms and conditions contained in section 15 of ordinance No. 16,676, passed by the Council of the City of Columbus, on the 23rd day of April, 1900, except that said company and its assigns shall only be required to run its said passenger cars over said loop, as required by this ordinance over its other lines within said city, and all the lines of said company and its assigns in said city shall be subject
108 to all provisions contained in said section fifteen (15) of said ordinance No. 16,676 aforesaid.

Sec. 18. As a consideration for the grants herein made the said The Central Market Street Railway Company and its assigns shall pay to the City of Columbus the following per cent. upon the gross receipts of said company for local passengers fares received within said City of Columbus, towit: Two per cent. of said fares, during

the term of said franchise, provided that by "local fares" is meant only those fares for passengers transported entirely within the limits of said city, and does not include any part of fares for passengers carried partly within and partly without said limits. Said payments shall be made annually at the beginning of each calendar year for the amounts earned during the preceding year, accompanied by a statement of the gross receipts during said period from local fares, duly verified by the proper officer of said company and filed with the Director of Accounts.

The Director of Accounts of said city, within 30 days immediately following the time of said payment, shall have access during business hours, to the books of said grantee or assigns for the sole purpose of ascertaining the amount of local fares received by said grantee or its assigns for carrying said passengers within said city limits during such preceding year. Provided, however, that, if at the beginning of any calendar year the said The Central Market Street Railway Company, and its assigns, shall notify said City of Columbus that it will, and shall thereafter sell tickets good for one passage upon its road in Columbus, Ohio, at the rate of eight tickets for 25 cts. and 33 tickets for one dollar, then said railway company shall be relieved from the further annual payments to said city under this section so long as it shall continue to sell tickets at such reduced rates.

Sec. 19. This grant is made and shall continue in force for the full period of twenty-five (25) years from and after the 23rd day of April, 1900, and all franchises and grants to said grantee and its assigns for extensions of lines, turn-outs, switches, connections or additional lines of street railway connected with, or to be con-
109 nected with the lines of street railway of said grantee and its assigns, authorized and permitted under this ordinance, shall be considered a part of the system of street railway hereby authorized, and shall expire and wholly terminate with the expiration of the franchise and grant authorized under the terms of this ordinance.

Sec. 20. This grant is made upon the condition that said railroad shall be constructed and ready for operation within said City of Columbus within two years from the passage of this ordinance, and if not constructed and in operation within said time the grant herein and all rights thereunder shall thereupon, and without any action on the part of said city, cease and determine. Provided, that if said grantee and its assigns be delayed in the construction by injunction or other proceedings in court over which it has no control, the time it is so delayed by such proceedings shall not be counted as a part of the period within which said railway is to be constructed and made ready for operation, but said period for such construction and putting in readiness for operation shall be extended by adding to the period of two years aforesaid the length of time said company is so delayed by said causes.

Sec. 21. Upon the expiration of the term of twenty-five (25) years, provided by this ordinance, unless such grant has been renewed or extended by said city, the City of Columbus shall have the

right by giving two years' notice in writing, before the expiration of said term of twenty-five years, of its intention so to do, to purchase of the said grantee and its assigns so much of its lines of railway as then lies within the city at a purchase price to be fixed by three disinterested men, one of whom shall be selected by the city, one by said grantee or its assigns, and the third by the two so chosen; provided, that if said city shall not elect to purchase said portion of said railway or shall not renew or extend said grant, then said grantee and its assigns shall within eight months from the expiration of said time remove the tracks, wires, poles and conduits and other properties from the streets so occupied by it, and shall leave the portions of the streets so occupied by them in good con-
110 dition and repair. And if said city elects to make said purchase the price fixed therefor shall be paid the said grantee or its assigns in cash before taking possession of said part of said railway, and within sixty days after said price is so fixed by said arbitrators; and in default of such payment within said time said option to cease and determine.

Sec. 22. The said city hereby reserves the full right and power to grant to any other company, corporation or individual, the right to jointly use all or any part or parts of said tracks with said The Central Market Street Railway Company and its assigns, and with each other upon equitable terms of payment to said The Central Market Street Railway Company, and its assigns, taking into consideration the value, cost of construction, amounts paid and repaid for street paving and other street improvements and the maintenance of the tracks so used and of the power used for operation. In the event said terms cannot be agreed upon by said owning, succeeding or assignee company, and the party applying for said joint use within sixty days after application therefor following a grant for such joint use by said city, said terms shall be submitted to arbitration, one arbitrator to be chosen by said owner, successor or assignee, one by the party desiring to jointly use said tracks, and these two so selected to select the third arbitrator. The decision of said arbitrators in the absence of fraud, accident or mistake of law or fact, to be final and conclusive on both parties. But said City of Columbus reserves the right to fix and determine by ordinance the rules and regulations governing such joint use and occupation. Provided, that neither the arbitration herein mentioned nor any appeal therefrom, shall in any manner delay the joint use and occupation by any person, firm or corporation, which shall receive a grant thereof as aforesaid, with The Central Market Street Railway Company, under such rules and regulations as shall have been fixed by said city as aforesaid. Provided, further, that said The Central Market Street Railway Company and its assigns, shall not have the right to grant to any other company, corporation or individual, permission to use any portion of its said tracks with- said city without such permission
111 having first been given by said city.

Sec. 23. The said city also reserves the right to grant to any other company, corporation or individual, permission to lay, on that part of Parsons avenue covered by this grant, at its or their own

expense, any additional rail or rails, to be used by such company, corporation or individual in connection with the rail or rails, ties and roadbed of The Central Market Street Railway Company; the use thereof and the compensation to be paid to said The Central Market Street Railway Company and its assigns, for such use to be arrived at and determined by arbitration in the manner and with like effect as provided by section 22 of this ordinance. Provided, that the laying of such additional rail or rails shall be under the supervision and subject to the approval, of the Board of Public Works of said city.

Sec 24. The terms "The Central Market Street Railway Company," "said company," "The grantee," and "The company," wherever used in this ordinance, unless the connection clearly indicates a different intention, is intended, and shall be construed, to mean "The Central Market Street Railway Company and its assigns."

Wherever in this ordinance the term "the City of Columbus," "the city," or "said city" is used, said terms, unless the connection clearly indicates a different intention, is intended, and shall be construed, to mean "the City of Columbus, Ohio."

Sec. 25. This ordinance shall take effect and be in force from and after its passage and legal publication and the filing with the City Clerk of said city by said company of a written acceptance of its terms and conditions, and the payment *of* said company of the cost of publication of this ordinance.

JAMES J. THOMAS,
President of the City Council.

Passed January 21, 1901.

Approved by the Mayor, January 22, 1901.
Attest:
JOHN T. BARR,
City Clerk.

112 EXHIBIT No. 3.

Columbus, Ohio.

August 20, 1918.

To the City of Columbus, Ohio; George J. Karb, Mayor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Arthur P. Lammeck, Joseph C. Nailor, Edgar L. Weinland, and Fred P. Zimpfer, Members of the City Council of said City, City Hall, Columbus, Ohio:

The Columbus Railway, Power and Light Company, hereinafter referred to as This Company, has for sometime past been operating its street railway lines in the City of Columbus under two certain franchises granted by said city, the first to The Columbus Railway Company for a term of twenty-five years by ordinance approved February 6, 1901, sometimes called and hereinafter referred to as the

Blanket Franchise, duly transferred and conveyed by that company to this company by deed dated January 29, 1914, and the second to The Central Market Street Railway Company for twenty-five years by ordinance approved January 22, 1901, hereinafter referred to as the Central Market Franchise, duly conveyed, after foreclosure proceedings, to this company by deed dated March 1, 1907.

This company is the owner of certain other franchises previously granted to predecessors in title of The Columbus Railway Company but duly transferred and conveyed by said company to this company by the deed aforesaid of January 29, 1914, which said franchises were granted without limitation of time and are perpetual. The streets covered by these perpetual franchises are set forth in Section 20 of said Blanket Franchise ordinance under the heading "Perpetual Franchises." Said section reads as follows:

"The grants and provisions hereinbefore made and contained for the renewal of the franchise of the said The Columbus Railway Company on the streets and avenues hereinbefore mentioned in section 1 of this ordinance, shall in all respects apply to the grants, rights, privileges and franchises of the predecessors in title of said The Columbus Railway Company, to construct, maintain and operate lines of street railway on Main street, (formerly called Friend street) from High street to Rose avenue; on State street from High street to Grant avenue; thence in a northerly direction on Grant
113 avenue to Oak street; thence on Oak street in an easterly direction to Sherman avenue, (formerly called Bruce street); on Long street from High street in an easterly direction to Mulberry street, and thence in a southerly direction on Mulberry street from Long street to Broad street; on Cleveland avenue in a northerly direction from Long street to Mt. Vernon avenue; thence in an easterly direction on Mt. Vernon avenue to Washington avenue; on West Broad street from High street to a point opposite the center of the east driveway to the Central Hospital for the Insane, (the same being the corporation line of the City of Columbus as established by ordinance of the City of Columbus, passed on or about May 18th, 1890); on Glenwood avenue in a southerly direction from Broad street to the Harrisburg pike; thence in a southwesterly direction on the Harrisburg pike to Green Lawn cemetery; as fully as if the routes and streets and avenues mentioned in this section were specifically mentioned and included in the first section of this ordinance, if, and so far as, the franchises in the streets and avenues mentioned in this section or either of them or any part thereof shall hereafter be judicially declared by a court of competent jurisdiction, or by any appellate court to which any suit brought to test any or all of said franchises shall be brought, may be carried by proceedings in error or on appeal, not to be franchises in perpetuity.

"It is expressly provided that nothing contained in this ordinance is intended, nor shall anything herein be construed to be, a concession by said City of Columbus of the validity of any claim of said company to perpetual franchises to operate lines of street railroad in all or any of the streets and parts of streets named in this section.

"It is further expressly provided, that nothing contained in this

ordinance shall be pleaded or considered to be a bar to any suit or suits which may hereafter be brought in any court or courts of competent jurisdiction, seeking to test the validity of any claim or claims *to* said company to perpetual franchises to operate any line or lines of street railroad upon any of the streets or parts of streets mentioned in this section."

Under the provisions of the Blanket Franchise and the Central Market Franchise, this company has for a number of years been issuing and selling eight tickets for twenty-five cents and giving universal free transfers thereon, which represents a lower street railway fare than is in force in any city in the United States and is under present circumstances non-compensatory and confiscatory.

The street railway property of this company is worth more than twelve millions of dollars on any reasonable basis of investment or physical value. The bonds outstanding fairly chargeable against the street railway property amount to $7,225,000., on which the annual interest charge amounts to over $333,000. Under the law,
114 this company is entitled to earn from the operation of its street railway lines a fair return upon the value of the property which it employs in furnishing street railway service to the people of the City of Columbus.

Recently, the operating expenses of this company, as of all other street railway companies, have greatly increased, owing to the increased and increasing cost of all materials and supplies, in many instances more than one hundred per cent., and to the higher wages that all such companies have been required to pay to their employes. The taxes and necessary replacement and other depreciation charges have also materially increased. Take, for example, the coal bill; in the year 1915, this company paid for coal required to operate its street railway lines the sum of $60,164; the bill, in the year 1916, was the sum of $81,354.; and, in the year 1917, the bill had increased to the sum of $234,838. Also, the wage account of the railway employes of this company, in the year 1916, amounted to the sum of $806,336.; but, in the year 1917, it had increased to the sum of $887,994. These large increases in operating and maintenance expenses have resulted in corresponding decreases in the net earnings of this company. Its street railway net earnings for the twelve months ending June 30, 1918, after deducting operating expenses and taxes and setting aside a proper amount to represent depreciation, were only the sum of $301,987, which was not enough to pay the interest on the bonds outstanding properly chargeable against the street railway property of this company.

In the month of June, 1918, railway employes of this company demanded higher wages, and, after some negotiations, the controversy was submitted for arbitration to the National War Labor Board. By the decision of that Board, rendered July 31, 1918, the wages of the railway employes of this company were increased over fifty per cent., resulting in an increase of more than $560,000. over the highest amount ever paid by this company to its railway employes in any one year. With this increase, the wages required to be paid

by this company to its railway employes will be more than $1,500,000. per year.

115 It will thus be seen, that, although this company was not earning a fair return on its street railway property prior to the wage increase fixed by the National War Labor Board, the added burden of the Board's wage award will result in leaving this company without any net earnings whatever. In fact, its gross earnings will fall short by more than $250,000 of meeting its operating expenses, without allowing anything whatever for interest on its bonds, which interest must be paid.

This company is a public utility upon which the law imposes certain duties and obligations, including the duty of maintaining its property in good order and repair, so that it may render adequate and satisfactory service to the public. This company can not do this unless it receives sufficient revenue from the operation of its cars, which means that the rates must be adequate. The rates prescribed in those two franchise ordinances are inadequate and confiscatory, and all rights of the city and of the public thereunder are and must be subject and subordinate to the provisions of the Fourteenth Amendment to the Constitution of the United States prohibiting the State or any municipality therein from depriving this company of its property without due process of law, that is, in the present case, from forcing upon this company inadequate and confiscatory rates of fare.

On February 25, 1918, this company, appreciating the situation then existing, requested in writing the city council of the City of Columbus to authorize this company to charge higher rates, but this request was summarily refused. A later request for relief was also refused, notwithstanding the belief expressed by the Mayor and some members of the City Council that relief should be granted.

Increased revenue and proper compensation for service rendered are necessary in order that this company may continue to perform its public duties. And this fact was recognized by the National War Labor Board, which in its award granting large increases in the wages of this company's railway employes, said:

116 "This increase in wages will add substantially to the operating cost of the company and will require a reconsideration by the proper regulating authority of the fares which the company is allowed by law to collect from its passengers. We make part of this award the words we have used in the award in the Cleveland case: We have recommended to the President that special congressional legislation be enacted to enable some executive agency of the Federal Government to consider the very perilous financial condition of this and other electric street railways of the country, and raise fares in each case in which the circumstances require it. We believe it to be a war necessity justifying Federal interference. Should this be deemed unwise, however, we urge upon the local authorities and the people of the locality the pressing need for such an increase adequate to meet the added cost of operation."

And again that Board in its award said:

"In justice the public should pay an adequate war compensation for a service which can not be rendered except for war prices. The credit of these companies in floating bonds is gone. Their ability to borrow on short notes is most limited. In the face of added expenses which this and other awards of needed and fair compensation to the employes will involve, such credit will completely disappear. Bankruptcy, receiverships and demoralization, with failure of service must be the result. Hence our urgent recommendation on this head."

This company must now refuse to continue the plan of issuing and selling eight tickets for twenty-five cents with universal free transfers, and now hereby surrenders, relinquishes and cancels the aforesaid Blanket Franchise and the aforesaid Central Market Franchise, and it will no longer operate its cars thereunder. It will hereafter consider and hold itself a tenant at sufferance in those streets which are not covered by its perpetual franchises, and it will withdraw from those streets whenever the city notifies it to do so. In order to give street railway service to the people of the City of Columbus, this company will continue to operate its street railway lines, but not under said two franchises or either of them, upon all of the streets of the city until notified by it to withdraw from those streets not covered by the aforesaid perpetual franchises.

This company does hereby give further notice to the City that it will at once discontinue the sale of eight tickets for twenty-five cents and the giving of universal free transfers and that it will hereafter charge five cents for a single ride and one cent for each transfer, transfer slips to be used at designated transfer points. In regard to the tickets heretofore sold and now outstanding in the hands
117 of the public, this company will accept and honor them as heretofore.

Respectfully submitted by order of the Board of Directors.

THE COLUMBUS RAILWAY,
POWER & LIGHT COMPANY.
By S. G. McMEEN, *President*.

And afterwards, to-wit: on the 21st day of September, A. D. 1918, there was filed in the Clerk's Office of said Court in said cause, a certain Opinion of Judge Westenhaver, which said Opinion is clothed in the words and figures following, to-wit:

118 *Opinion of Judge Westenhaver.*

In the United States District Court, Southern District of Ohio, Eastern Division.

In Equity.

No. 104.

THE COLUMBUS RAILWAY, POWER & LIGHT COMPANY, Complainant,

vs.

THE CITY OF COLUMBUS, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck, and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

Opinion.

WESTENHAVER, *District Judge:*

This cause has been heard and submitted on complai-ant's application for a preliminary injunction based on its verified bill and affidavits, and on defendants' motion to dismiss for want of jurisdiction and because a valid cause of action in equity is not stated. These respective motions have been elaborately argued both orally and by briefs. Due consideration has been given to the many authorities cited and the several contentions made, but this opinion will deal only with such as seem to me vital and controlling.

The complainant is a corporation organized under the laws of the state of Ohio. The defendant, the city of Columbus, is a municipal corporation of the state of Ohio, and the other defendants are its mayor, members of its council and other city officials. Complainant owns and operates a system of street railways within the city of Columbus and is engaged in manufacturing and selling heat, light, and power to the inhabitants of the city and the industrial plants therein and adjacent thereto.

Complainant's street railways lines have been constructed, maintained and operated by virtue of certain grants or fran-
119 chises. Those are embodied in two ordinances duly enacted by the proper authority of the city of Columbus. The principal franchise, called the Blanket franchise, is ordinance No. 17801, passed February 4, 1901; and the other, called the Central Market franchise, is ordinance No. 17802, passed January 21, 1901. In addition, complainant claims to own a perpetual franchise on certain streets, but the provisions thereof are not material to any question now to be decided. Both franchises are for terms of twenty-five years and will not expire, by their terms, earlier than the year 1926,

They require the grantee to carry passengers for a single cash fare of five cents and to sell tickets in packages of eight for twenty-five cents, and to give universal free transfers upon the payment of a five cent fare or the presentation of one of these tickets.

Complainant's bill alleges and the supporting affidavits clearly show that the cost of operating these street railway lines has greatly increased during the present war, owing to the rise in price of coal, material, supplies and labor. As a result of this increased cost the net earnings from the operation of the street railway line for the year ending June 30, 1918, after deducting taxes, operating expenses and a proper charge for depreciation, were only $301,987.00. These earnings are insufficient by the sum of $31,000.00 to pay interest on outstanding bonds, and are sufficient to allow a net return of only 4⅛ per cent on the actual value of the capital invested in the street railway system. The value of this property, it is alleged, is $12,000,000.00, and the par value of the bonds issued and outstanding is $7,225,000.00.

In June 1918 complainant's street railway employes demanded an increase in wages and, in order to avoid a strike, the controversy between the complainant and its employes was submitted to the National War Labor Board for decision. This board on July 31, 1918, made an award granting to the employes an average increase of 50 per cent in the rate of wages hitherto being paid. Com-
120 plainant abided by this decision and granted the increase thus awarded. The amount of this increase, it is estimated, will be for the ensuing year $560,000.00, and as a result thereof, it is estimated that the gross earnings will fall short of paying operating expenses, taxes and a proper allowance for depreciation by approximately $250,000.00. This leaves no net income either to pay interest on outstanding bonds or dividends on capital actually invested.

Complainant alleges that these facts were twice brought to the attention of the city council of defendant, and request made for permission to increase the rate of fare above that fixed by those franchise grants so as to permit the earning of a reasonable return on the invested capital. This request being either denied or ignored, complainant on August 20, 1918, filed with defendants a communication in writing stating that it would henceforth discontinue the selling of eight tickets for twenty-five cents, and the giving of universal transfers, and that it surrendered, relinquished and cancelled its two franchises; that it would no longer operate cars thereunder; that it would thereafter consider itself a tenant by sufferance only on the streets, and would withdraw therefrom whenever notified so to do by the city, but that until so notified, and in order not to deprive the traveling public of service, it would continue to operate its lines, not under those franchises or either of them, but at a rate of fare to be fixed by itself. It thereupon fixed the rate at five cents for each fare and made a charge of one cent for each transfer to be issued, discontinuing the sale of eight tickets for a quarter and free transfers. This rate thus established has been in force since August 20, 1918.

On the same day as this communication in writing was filed the

bill herein was also filed. This bill, as well as the amended bill filed September 3, 1918, states that the defendants threaten and will, unless restrained, attempt to force complainant to continue to operate these street railway lines in accordance with the terms
121 of these two franchise grants. The nature of the threats made and the means to which it is expected the city will resort to enforce its threats are not stated or shown.

Complainant's bill also alleges and shows that in addition to its street railway business it is engaged in manufacturing and selling electricity for heat, light and power. The capital invested therein, the earnings thereof and the franchise rights are not disclosed. The city of Columbus and its suburbs, it is alleged, contain a population of more than 250,000; that it is a large industrial manufacturing center in which are situated shops, factories and plants; that many of these persons and plants are employed in the making of various kinds of munitions and war materials necessary to the prosecution of the war; that within the territory served by complainant's street railway lines and by its heat, light and power is located a military barracks in which are quartered more than 100,000 recruits per annum. All these it is said are dependent upon the street railway service and on the heat, light and power furnished by complainant. The discontinuance or impairment of this service would cause great harm to the Government of the United States, to the people of the city of Columbus and to all persons dependent thereon.

Complainant's amended bill alleges and the supporting affidavits show that it has in progress a plan to enlarge its heat, light and power business and that it is necessary to buy and install new equipment for this purpose, and that in order so to do, it is necessary to raise new capital which it is unable to do because of the low rates of fare fixed for street railway service.

Such in substance and in brief is the case made upon which the jurisdiction of this court is involved and a preliminary injunction is asked. Complainant urges that any action of the city or its officials compelling the continuance of street railway service on the terms of these franchises at less than cost, or at a loss is depriving it of its property without due process of law in violation of the
122 due process clause of the Fourteenth Amendment. This position is supported by two lines of argument. One is that the fare provisions of these franchises amount only to a legislative fixing of a rate of fare for transportation service, and cannot be enforced when conditions have so changed that this rate of fare does not yield a fair return on the capital actually invested. Another is that even if these franchises were mutually binding contracts when entered into, they are no longer enforcible because of the conditions produced by a state of war. From these positions it is argued that complainant has the right to treat these franchise conditions as terminated, and having, by its communication in writing to the city, so declared, it becomes and is thereafter a tenant by sufferance only in the streets, subject to objection at will by the city, but that while the city refrains from so ejecting it and permits street railway service to be given, complainant has the right to insist upon a rate of fare which will yield a fair return on the capital actually in-

vested, and that any effort of the city to compel service on terms which will deprive it of this fair return is depriving complainant of its property without due process of law. It is of course, insisted that the five cent straight fare with a charge of one cent for transfer is the rate necessary to yield that fair return on the capital actually invested, and is, therefore, a reasonable rate.

Defendants urge that the averments of the bill do not present a real and colorable, but only a fictitious and fraudulent federal question under due process of law clause of the Fourteenth Amendment; and that, therefore, inasmuch as there is no diversity of citizenship this bill should be dismissed for want of jurisdiction; and further that the bill does not state a valid cause of action in equity such as entitles complainant to any relief.

The primary and controlling question, in my opinion, depends on the nature of the relation created between the complainant and the city by these franchise grants. This relation is settled beyond controversy by numerous decisions of the Supreme Court of
123 Ohio and of the Supreme Court of the United States. The statute law of Ohio in force when these ordinances were passed were sections 2501, 2502, 2505, 2505*b*, 3443, 3443-12, Bates Annotated Statutes of Ohio. They are copied in full in the margin, 194 U. S. 531-34. These sections slightly different only in phraseology, are now sections 3768 to 3777 and 9101 to 9139 of the Ohio General Code. Cases construing these sections and defining the rights are burdens created by franchise ordinances, such as are now under consideration, are the following: Railway Co. vs. Village of Carthage, 36 O. S. 631, 634; City of Columbus vs. Street Railroad
(45)
Company, 46 O. S. 98; Interurban Company vs. Cincinnati, 93 O. S. 109; Cleveland vs. Cleveland City Railway Company, 194 U. S. 517; Cleveland vs. Cleveland Electric Railway Company, 201 U. S. 529; Cleveland Electric Railway Company vs. Cleveland, 204 U. S. 116.

The holding of all these cases is uniform. Of them the leading one is Cleveland vs. Cleveland City Railway Company, 194 U. S. 517. The law as settled by these cases is that the legislature has by these sections delegated to municipal corporations full power and authority to enter into binding contracts for the maintenance and operation of street railway lines; that whatever the city in fact does pursuant thereto is the act of the state and is mutually binding upon the parties. Franchise grants for fixed terms not exceeding twenty-five years, and for a fixed rate of fare to continue during the term of such grants may lawfully be made by the city under this legislative delegation of power. If the city passes an ordinance purporting to grant a franchise for a fixed term with a rate of fare to endure during that term, and this ordinance is accepted expressly or impliedly, a contract is engendered mutually binding and unalterable, except by the consent of both parties, during the term thereof.

In Cleveland vs. Cleveland City Railway Company, 194 U. S. 517 all these rules are fully stated and upheld. The ques-
124 tion there was whether or not the ordinances under consideration had in fact created a contract at a fixed rate of fare for

a definite term, thereby extinguishing a right reserved to the city in earlier ordinances of increasing or diminishing the rate of fare. Mr. Justice White, delivering the opinion says (p. 536):

"In reason, the conclusion that contracts were engendered, would seem to result from the fact that the provisions as to rates of fare were fixed in ordinances for a stated time and no reservation was made of a right to alter, that by these ordinances existing rights of the corporations were surrendered, benefits were conferred upon the public, and obligations were imposed upon the corporations to continue those benefits during the stipulated time. When, in addition, we consider the specific reference to limitations of time which the ordinances contained, and the fact that a written acceptance by the corporations of the ordinances was required, we can see no escape from the conclusion, that the ordinances were intended to be agreements binding upon both parties definitely fixing the rates of fare which might be thereafter charged. Taking all the circumstances above referred to into account, the case before us clearly falls within the rule as to the binding character of agreements respecting rates applied in Detroit vs. Detroit Citizens' Street Railway Company, 184 U. S. 368, and approvingly referred to in Knoxville Water Co. vs. Knoxville, 189 U. S. 434, 437."

The other cases are equally in point, and, inasmuch as no conflict exists therein, a review of them is unnecessary. Numerous cases illustrating and applying the same rule are contained in the United States Supreme Court Reports arising under municipal ordinances of other states. A citation of them is for the same reasons superfluous.

Complainant's further contention that the fare provision of these franchises is only a legislative regulation of the charge for service is also shown by these authorities to be untenable. There are cited, in support of this contention, Milwaukee Electric Railway Company vs. Wisconsin Railroad Commission, 238 U. S. 174, and other kindred cases. These cases establish a different principle and belong to a different class of cases. The right to regulate the charges for a public service is, as shown by these cases, a governmental function, and a municipality has not the power by contract to
125 deprive a state of that power unless expressly authorized so to do. In determining whether or not a state, through its agent, a municipality, has authorized and permitted this governmental power to be contracted away, all doubts will be resolved in favor of the public and against the alleged surrender of power. No question is made but that the *legislative* of a state may, unless restrained by state constitution, contract away this power either by an enactment of its own or by delegating to the municipality power so to do. The Milwaukee case only holds that applying these principles, it did not clearly and unmistakably appear that the state had contracted away this function of the government, or had delegated to the municipality the power to contract away.

The cases already cited show that as regards Ohio the state has delegated to municipalities full power to make a binding contract fixing for a definite term the rate to be charged for this service, and

has thereby disabled the municipality, if not itself, from altering or changing that rate during the fixed term. The law of Ohio is, as was said by Mr. Justice White, of the same kind as that of Michigan and Indiana. See City Railway Company vs. Citizens' Street Railway Company, 166 U. S. 557; Detroit vs. Detroit Citizens' Street Railway Company, 184 U. S. 568.

No question is made but that the franchise grants now being considered did by their terms purport to create a binding contract as to the rate of fare for a term of twenty-five years. It follows from this settled law that a contract has been engendered, mutually binding upon the city and upon the owner of these franchises; that this contract requires the owner during the entire term of twenty-five years to furnish street railway service at the rates of fare therein provided, and that neither the complainant nor the city during this term has the right to change or alter that rate without the consent of the other.

126 The impairment of contract and the due process of law clauses of the Constitution have often been invoked to prevent cities from impairing franchise grants, or forcing a reduction in the contract rate, and the courts have uniformly, despite all criticism, sustained and upheld them and, in so doing, have vindicated the law. It is equally the duty of the courts to uphold these contracts and vindicate the law when it is the grantee therein, and not the city which is seeking to change the terms thereof without the consent of the other party. It is of primary importance that contracts should be upheld by the courts, for the right to contract and the binding obligation of contracts once made lie at the foundation of all public and municipal law.

This proposition is really controlling of all questions argued, but a brief consideration of other questions presented should perhaps also be made.

One proposition strongly urged is that a steam or street railway cannot be compelled by injunction or mandamus to operate all or a part of its system at a loss, and that any effort so to do is depriving it of its property without due process of law. In its final analysis this proposition means that courts will not enforce a valid and binding contract if so to do will inflict loss upon one of the contracting parties. Manifestly the proposition when thus baldly stated will not be contended for. Obviously then the cases cited in which courts have refused to grant an injunction or a mandamus to compel the operation of all or a part of an unprofitable steam or street railway system turns upon different facts from those here present.

Briefly, and without reviewing at length the many cases cited, the law on this proposition, as I understand it, may be summed up as follows: If a railway company is under a statutory or a contract duty to maintain and operate a line, it will be compelled by injunction or mandamus so to do, even though the further operation

127 should be at a loss. It is only when there is no valid or binding obligation to continue operation that the company may, at its discretion, abandon an unprofitable line or branch. If there is a binding obligation to maintain and operate a part of a system, it is

questionable whether that part or branch can ever be abandoned, unless the losses inflicted by its continued operation are such as will wreck the entire system. On the other hand, if the operation of a railway line cannot be continued owing to insolvency, a court will not, by mandamus or otherwise try to compel its further operation, and this is particularly true if its continued operation will perform no useful public service. This refusal of the courts to interfere does not proceed on the view that the company had a right to abandon the operation of an unprofitable system, or of an unprofitable branch. If there is a statutory or contract duty to maintain and operate, this obligation still remains in law, just as a debtor's obligation to pay his debt remains after he has become insolvent; but a court will not attempt to compel by mandamus or otherwise that which is manifestly futile and impossible, for a court has no means of providing capital to operate an insolvent railway company or to continue its operation after it has become insolvent. This, it seems to me, is all that can be claimed for the statement found in some cases that a court will not compel a continued operation at a loss of a railway line or branch.

The true rule with its limitations and exceptions is, in my opinion, fully stated in Southern Railroad Company v. Hatchett, 174 Ky. 463, L. R. A. 1917-D, 1105; note L. R. A. 1915-A, 549. Illustrating and supporting these statements and conclusions are the following: Northern Pacific Railroad Company vs. Washington Territory, 142 U. S. 493; Interurban Company vs. Cincinnati, 93 O. S. 109; State ex rel. vs. Black Diamond Company, 97 O. S. —, O. L. R. April 1, 1918; Fort Loremie vs. Cross, Ohio C. C. A. not reported; State ex rel. vs. Bridgeton & M. T. Co., 68 (or 63) N. J. L. 592, 45 L. R. A.
128 837; State ex rel. vs. Spokane Street Railway Company, 19 Wash. 518, 41 L. R. A. 515; City of Potwin Place vs. Topeka R. R. Company, 51 Kan. 609; Paige vs. Schenectady R. R. Company, 178 N. Y. 102.

These conditions are not present in this case. The complainant does not allege insolvency or make any showing of inability to perform the terms of its contract. Its showing merely is that operation for the year ending June 30, 1918 yielded only 4½ per cent net return on capital actually invested, after deducting operating expenses, taxes and a reasonable allowance for depreciation; and that operation during the year ending June 30, 1919 at the increased wage schedule will result in a loss of $250,000.00 on operation alone.

These statements, it will be noted, apply only to the street railway part of complainant's business. Furthermore, this is not an application by the city for a mandamus or a mandatory injunction to compel continued operation under present conditions, nor a suit to compel specific performance of a harsh and unconscionable bargain. Complainant here is seeking an injunction to protect it in a manifest and plain violation of its contract. The rules of law under which courts have refused to compel the operation of an unprofitable railway branch or an unconscionable contract have no pertinency.

Complainant further contends and urges that it has the right to end these franchise contracts because of new conditions not foreseen

when they were entered into, that is to say, the war and the increased cost of operation due to the war. In support of this proposition are cited the following: The Kronprinzessin Cecilie, 244 U. S. 12, Krell vs. Henry, (1903) 2 K. B. 740; Metropolitan Water Board vs. Dick, Kerr & Co., Appeal Cases, 119 H. of L., (1917) 2 K. B. 1; Liston et al. vs. Owners of Steamship Carpathian (1915) 2 K. B. 42, 112 Law Times Reports, 994.

In my opinion, neither the facts of these cases nor the rules of law announced therein have any application to this situation. The Kronprinzessin Cecilie involves no question except whether its own-
129 ers were excused on July 31, 1914 from continuing its journey to Bremerhaven, Germany in view of the prospects of war and seizure. It was contended that, inasmuch as war had not been declared, and that perhapes the journey might have been completed without seizure, the contract of the vessel's owner to carry gold and deliver it in Europe might still have been possible of performance. It was not denied that actual seizure as a result of war could have discharged the contract because making it impossible of performance, and the court held that the imminence of such seizure was so apparent that due prudence justified the master of the vessel in returning to the United States.

In Krell vs. Henry the parties had made a lease of windows overlooking the Pall Mall for June 26th and 27th, 1902, when the King's coronation procession was to take place. Owing to illness the coronation procession was postponed. It was held that, notwithstanding the lease did not refer to the specific use for which the premises were being hired, namely, to view the coronation procession, and did not provide for ending the contract if for any reason it did not take place, the parties had made the lease in view of the expected coronation procession, and that the unforeseen and unprovided for contingency of its unavoidable postponement excused the lessee from payment. This case is of that class which holds that a destruction of the subject matter of a contract, or of a basis mutually assumed by the parties when entering into it, puts an end to the respective obligations.

In Metropolitan Water Board vs. Dick, Kerr & Company, a contractor had agreed to construct a part of a water system within six years, and after beginning work thereon his equipment and the site upon which he was to do the construction work was seized by the military authorities of Great Britain for war purposes. Obviously here was a vis major rendering impossible the further performance of the contract into which the parties had entered. It was
130 impossible to proceed further.

No such conditions are here present. The performance of these franchise contracts has not been made illegal nor rendered impossible by any superior power. War conditions, it is true, *has* made the performance of them only more burdensome and expensive, so far as the facts now presented tend to show. The war has in a different degree perhaps affected the performance of many, if not the larger part of outstanding and unexecuted contracts between citizens of the United States, yet it would be a strong proposition to

say that all such contracts are thereby rendered void or voidable at the option of the losing party.

The increased cost to complainant of performing its franchise contracts differs only in degree and quality from that due to other economic causes prevailing since they were made. If the war or economic changes had decreased the price of coal, materials, supplies and labor, it would not be urged upon anyone that the city would have the right to declare null and void these contracts or the fare provisions therein, and establish a new rate in accordance with new conditions; and if the city should take such a position it would be met, and justly, with a complaint that such action is impairing the obligation of a valid and binding contract.

In order to make applicable the principles of law urged in this connection, it would be necessary to show that war or military authority had directly interfered in such a manner as to make these contracts illegal or impossible of performance. Nothing less than the equivalent of actual seizure by military authority, or a direct and forcible intervention to prevent further performance, would bring the case within the operation of these rules.

Complainant also invokes the rule announced in the majority opinion in Denver Union Water Company vs. Denver decided by the United States Supreme Court March 4, 1918. That case, in my opinion, has no application. There the Denver Union Water
131 Company had constructed and operated its plant under a franchise expiring in 1910, and thereafter, during a certain period, it remained a tenant by sufferance with the right on its part to discontinue service and remove its pipes and hydrants from the streets, and with the right and power of the city at any time to compel the removal thereof. Later an ordinance was passed to regulate the terms and conditions, including charges, upon which the water company should continue to perform its public service. It was not held that the owner of a water system with an expired franchise, the property of which is subjection to ejection at the will of the city has a right to complain under the due process of law clause because the terms and conditions under which service is rendered in that situation does not yield a fair return on the capital invested. It was held that the so-called regulating ordinance granted a new franchise of indefinite duration, terminable either by the city or the company at such time and under such circumstances as may be consistent with the duty that was owing by both to the inhabitants of Denver, and while this new franchise of indefinite duration remained undetermined by the city, the water company was entitled to enjoin the rate fixed for service because not yielding a fair return on the capital actually invested. This, it was said, deprived the company of its property without due process of law. If the regulating ordinance had not been construed as granting a new franchise of indefinite duration, but had merely been one forbidding a charge higher than a certain rate during such time as the water company saw fit to leave its pipes and hydrants in the streets and perform service, the fair implication is both from the majority and minority opinions and other cases previously decided that no relief would have

been accorded. See also Cleveland Electric Railway Company vs. Cleveland, 204 U. S. 116; Detroit United Railway vs. Detroit, 229 U. S. 39; Denver vs. Denver Union Water Company, 229 U. S. 123.

Complainant's franchise contracts, as already said, have
132 not expired. It is not a tenant of the streets under a franchise contract of indefinite duration, much less a tenant merely by sufferance. It has not the right to remove its tracks at will, or to refuse to operate a street railway line.

I am of opinion that the bill should be dismissed because it does not state facts constituting a valid cause of action in equity.

I am also of opinion that on the facts stated this court has no jurisdiction. There being no diversity of citizenship, jurisdiction is invoked only because of the due process of law clause of the Fourteenth Amendment. The facts stated in the bill show a valid and binding contract from the force and effect of which complainant is seeking to escape. No threatened action of the city authorities is complained of, except that it may endeavor to enforce compliance by complainant with its contract. No charge is made that other than legal methods will be adopted for that purpose, and, in the absence of a statement clearly showing a threatened resort to illegal means, a court must assume that the city officials will proceed in conformity to law.

The law is well settled, as contended for by complainant, that if the facts stated make a real and colorable federal question, jurisdiction properly attaches and will not be ousted, even if on the hearing the claim thus made is held to be without merit in law, or without foundation in fact. On the other hand, when no real and colorable, but only a fraudulent and fictitious federal question is stated, the jurisdiction of the court does not attach for any purpose, and it is the duty of a federal court of its motion to refrain from such an unwarranted exercise of jurisdiction. And even when the threatened act may be an impairment of a contract, or a deprivation of property without due process of law, still if the only means threatened to be used are resort to the courts or to legal proceedings, a case is not stated within the jurisdiction of a federal court.
133 Such seems to me to be the present case. For authority see the following: Penn Mutual Life Insurance Company vs. Austin, 168 U. S. 685; St. Paul Gas Light Company vs. St. Paul, 181 U. S. 143; Defiance Water Company vs. Defiance, 191 U. S. 184; Barney vs. New York, 193 U. S. 437; Des Moines vs. De Moines etc. Railway Company, 214 U. S. 179.

The application for a preliminary injunction will be denied. The motion to dismiss will be granted both for want of jurisdiction and because no valid cause of action in equity is stated.

This opinion should perhaps be ended here, but the importance of the interests at stake moves me to make some further observations, in the hope that the apparently strained relations between the complainant and defendants may be ameliorated. It cannot be denied, on the showing made, that the present war has greatly increased the cost of street railway operation. The award of the National War Labor Board in the wage controversy cannot be regarded otherwise

than binding on the company, and the increase of wages granted by the company pursuant thereto cannot, in any fair sense, be considered as its voluntary act. It is also undoubtedly true, on the showing made, that complainant cannot, under existing conditions, finance any improvements made necessary to meet new demands for heat, light and power, or for increased street railway facilities; and its failure so to do must injure the interests of the defendant and its inhabitants as much as it injures the complainant.

Prolonged operation under these conditions would seem to be a manifest impossibility and must result in impairing the street railway service and grievously harming the people and business of the city. These considerations do not, for the reasons already stated, present any ground upon which a court can grant relief, for it has power only to declare the law and apply it. A sound policy forbids usurpation by the court of governmental power lodged in other departments of the Government. No power inheres in a court
134 either to make contracts for parties or to absolve them from the effect of their contracts when the parties are competent in law to contract and no fraud intervenes in the making thereof.

In view of these well recognized limitations of the court's power, I can only suggest that the present emergency, likely as it is to become much graver in the near future, calls urgently for some kind of accommodation or temporary compromise between the parties. No intimation is made that blame attaches to either, much less that one more than the other is at fault, for "it is undoubtedly true that the present situation is due to the rapid and unexpected evolution of uncontrollable events"; but some kind of a modus vivendi fair to both and to endure at least for the period of the war should be agreed to in order that loss to both may be prevented and the public mind may not be distracted by a street railway war when engrossed in problems of a foreign war. If something is not done no gift of prophecy is required to foresee that the recommendation of the National War Labor Board will be acted upon, namely, that the President of the United States, as Commander in Chief of its armed forces by virtue of the powers inherent in his office and conferred by Congress, will seize and operate the street railway at rates yet to be fixed. Such a shifting of duty and of responsibility would not be creditable to the people of a self-governing city, nor to the business management of an efficient public service corporation.

D. C. WESTENHAVER,
United States District Judge.

September 20, 1918.

And afterwards, to-wit: on the 9th day of October, A. D. 1918, a Decree was entered in the Clerk's Office of said Court in said cause, which said Decree is clothed in the words and figures following, to-wit:

Decree Dismissing Bill.

135 In the United States District Court for the Southern District of Ohio, Eastern Division.

In Equity.

No. 104.

THE COLUMBUS RAILWAY, POWER AND LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck, and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

Entry.

This cause coming on to be heard on the plaintiff's motion for a temporary restraining order and a preliminary injunction based on its verified amended bill and the affidavits in support thereof, and on defendants' motion to dismiss said bill for the reasons therein stated, and having been argued by counsel, it is now, upon consideration thereof, ordered, adjudged and decreed by the Court as follows: That the plaintiff's said motion be and is hereby overruled and denied; that said motion of the defendants to dismiss this suit be and is hereby sustained; that this cause be and is hereby dismissed because the amended bill does not state facts constituting a valid cause of action in equity against the defendants or any of them; that on the facts stated in said bill the Court has no jurisdiction of the cause; and that the defendants recover their costs herein of the plaintiff; to which order, judgment and decree of the Court, and every part thereof, the plaintiff excepts.

Enter.

D. C. WESTENHAVER, *Judge.*

136 And afterwards, to-wit: on the 11th day of October, A. D. 1918, came the Complainant by its Solicitors and filed in the Clerk's Office of said Court its certain Petition for Appeal, which said Petition for Appeal is clothed in the words and figures following, to-wit:

Petition for Appeal.

In the United States District Court for the Southern District of Ohio, Eastern Division.

In Equity.

No. 104.

THE COLUMBUS RAILWAY, POWER AND LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck, and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

Petition for Appeal.

The above named plaintiff, The Columbus Railway, Power and Light Company, a corporation of the State of Ohio, conceiving itself aggrieved by the order, judgment and decree entered on the 9th day of October, 1918, in the above entitled cause, doth hereby appeal from said order, judgment and decree to the Supreme Court of the United States, and it prays that this its appeal may be allowed; and that a transcript of the record and proceedings and papers, including the opinion of the Court, upon which said order, judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

WILLIAM O. HENDERSON,
HENRY J. BOOTH,
HENDERSON & BURR,
BOOTH, KEATING, POMERENE & BOULGER,
Solicitors for Plaintiff and Appellant, The Columbus Railway, Power and Light Company.

JOSEPH S. CLARK,
HENRY A. McCARTHY,
Of Counsel.

137 And afterwards, to-wit: on the 11th day of October, A. D. 1918, came the plaintiff, by its solicitors and filed in the Clerk's Office of said Court its certain Assignment of Errors in said cause, which said Assignment of Errors is clothed in the words and figures following to-wit:

Assignment of Errors.

In the United States District Court for the Southern District of Ohio, Eastern Division.

In Equity.

No. 104.

THE COLUMBUS RAILWAY, POWER AND LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck, and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

Assignment of Errors.

The above named plaintiff and appellant, The Columbus Railway, Power & Light Company, now comes and makes and files this its assignment of errors:

(1) Said District Court erred in dismissing the above entitled cause.

(2) Said Court erred in holding, deciding and decreeing that said cause should be dismissed because the amended bill does not state facts constituting a cause of action in equity against the defendants or any of them.

(3) Said Court erred in holding, deciding and decreeing that said bill does not state facts constituting a cause of action in equity against the defendants or any of them.

(4) Said Court erred in holding, deciding and decreeing
138 that the facts stated in said bill *does* not show any federal question for the consideration and decision of the Court.

(5) Said Court erred in holding, deciding and decreeing that said bill does not state any facts which show the Fourteenth Amendment to the Constitution of the United States has been invaded or violated or any right of the plaintiff under said Amendment has been invaded or violated by the defendants or any of them; and that neither said Amendment nor any right of the plaintiff thereunder would be invaded or violated by the enforcement by the defendants or any of them of said ordinances mentioned in said bill.

(6) Said Court erred in holding and deciding that said two franchise ordinances in said bill are respectively contracts which are binding and unalterable without the consent of the parties thereto during the terms thereof.

(7) Said Court erred in holding and deciding that said two franchise ordinances each required the plaintiff, during the respective terms thereof, to furnish street railway service at the rates of fare therein prescribed.

(8) Said Court erred in holding and deciding that said two franchise ordinances each required the plaintiff, during the respective terms thereof, to furnish the street railway service at the rates of fare therein prescribed, notwithstanding the fact that, by reason of unexpected and changed conditions said rates of fare will not yield sufficient return to plaintiff to pay its operating expenses, taxes and a proper amount for depreciation of property used in serving the public.

(9) Said Court erred in holding and deciding that the plaintiff had not and has not the right to terminate or suspend said two franchise ordinances, or either of them, because of the new conditions resulting from the present war and the increased cost of operation due to said war, which were not foreseen when said ordinances were passed and accepted.

139 (10) Said Court erred in overruling plaintiff's motion for a temporary restraining order and a preliminary injunction.

(11) Said Court erred in holding, deciding and decreeing that it had and has no jurisdiction in said cause.

(12) Said Court erred in holding and deciding that said bill does not state a case within the jurisdiction of said Court.

(13) Said Court erred in sustaining the motion of the defendants to dismiss this suit.

WILLIAM O. HENDERSON,
HENRY J. BOOTH,
HENDERSON & BURR,
BOOTH, KEATING, POMERENE & BOULGER,
Solicitors for Plaintiff and Appellant, The Columbus Railway, Power & Light Company.

JOSEPH S. CLARK,
HENRY A. McCARTHY,
Of Counsel.

140 And afterwards, to-wit: on the 14th day of October, A. D. 1918, an Order Allowing Appeal was entered in the Clerk's Office of said Court in said cause, which said Order is clothed in the words and figures following, to-wit:

Order Allowing Appeal.

In the United States District Court for the Southern District of Ohio, Eastern Division.

In Equity.

No. 104.

THE COLUMBUS RAILWAY, POWER AND LIGHT COMPANY, a Corporation of the State of Ohio, Plaintiff,

vs.

THE CITY OF COLUMBUS, OHIO, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck, and Fred P. Zimpfer, Members of the City Council of said City, Defendants.

Entry.

And now it appearing that the above named plaintiff has filed its petition for appeal from the order, judgment and decree herein rendered against it and entered on or about the 9th day of October, 1918, to the Supreme Court of the United States and has also filed its assignment of errors pursuant to the rules of said Supreme Court, it is ordered and adjudged that said appeal from said order, judgment and decree be and the same hereby is allowed and granted as prayed for in said petition for appeal, upon the plaintiff giving its appeal bond to the defendants, with sufficient surety, in the penal sum of five hundred dollars ($500), conditioned for costs on appeal according to law.

Enter: D. C. WESTENHAVER, *Judge.*

141 And afterwards, to-wit: on the 14th day of October, A. D. 1918, came the Plaintiff, and filed in the Clerk's Office of said Court, its certain Bond on Appeal in said cause, which said Bond on Appeal is clothed in the words and figures following, to-wit:

Bond on Appeal.

Know all Men by these Presents, That we, The Columbus Railway Power & Light Company, as principal, and The United States Fidelity & Guaranty Company, as surety, are held and firmly bound unto The City of Columbus, Ohio, George J. Karb, Mayor of said City, Henry L. Scarlett, City Attorney and City Solicitor of said City, James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred P. Zimpfer, Members of

the City Council of said city, in the full and just sum of Five Hundred 00/100 Dollars, to be paid to the said The City of Columbus, Ohio, George J. Karb, Mayor of said City, Henry L. Scarlett, City Attorney and City Solicitor of said City, James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred P. Zimpfer, Members of the City Council of said City, their certain attorneys, executors, administrators or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 11th day of October, in the year of our Lord one thousand nine hundred and eighteen (1918).

Whereas, lately at a term of the District Court of the United
142 States for the Southern District of Ohio, Eastern Division, in a suit depending in said Court, between The Columbus Railway, Power and Light Company, a corporation of the State of Ohio, plaintiff, and said City of Columbus, Ohio, said Karb as such Mayor, said Scarlett as such City Attorney, said Thomas as said City Clerk, and said Westlake, Alcott, Griffin, Nailor, Weinland, Lamneck and Zimpfer as members of said City Council, Defendants, a decree was rendered against the said The Columbus Railway, Power & Light Company and the said The Columbus Railway, Power & Light Company, having obtained an appeal and filed a copy thereof in the Clerk's Office of the said Court to reverse the decree in the aforesaid suit, and a citation directed to the said The City of Columbus, Ohio, George J. Karb, Mayor of said City, Henry L. Scarlett, City Attorney and City Solicitor of said City, James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred P. Zimpfer, members of the City Council of said City, citing and admonishing them to be and appear at a session of the United States Supreme Court to be holden at the City of Washington, District of Columbia, on the 13th day of November next.

Now, the condition of the above obligation is such, That if the said The Columbus Railway, Power & Light Company shall prosecute its said appeal to effect and answer all damages and cost if it fail to make its plea good, then the above obligation to be void; else to remain in full force and virtue.

Sealed and delivered in presence of—

THE COLUMBUS RAILWAY, POWER & LIGHT COMPANY,
By S. G. McMEEN, *Its President.* [SEAL.]
UNITED STATES FIDELITY AND GUARANTY COMPANY. [SEAL.]
By TRAFFORD B. TALLMADGE,
Attorney in Fact.

Attest:
A. T. BURINGTON, *Secretary.*

Approved by—
D. C. WESTENHAVER,
U. S. District Judge.

143 Thereupon there was issued a certain Citation in the above entitled cause, directed to said defendants, which said Citation is clothed in the words and figures following, towit:

Citation.

United States Supreme Court.

To The City of Columbus, Ohio, a municipal corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred Zimpfer, Members of the City Council of said City, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court, to be holden at the City of Washington, on the 13th day of November next, pursuant to an Appeal, filed in the Clerk's Office of the District Court of the United States for the Southern District of Ohio, wherein The Columbus Railway, Power and Light Company, a corporation of the State of Ohio, is appellant, and you are appellees, to show cause, if any there be, why the decree rendered against the said appellant, as in the said appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable, Edward Douglass White, Chief Justice of the United States, this 14th day of October, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America, the one hundred and forty-third.

D. C. WESTENHAVER,
United States District Judge.

144 And afterwards, towit: on the 24th day of October, A. D. 1918, there was returned and filed the citation heretofore issued herein with the Marshal's Return endorsed thereon as follows, towit:

Marshal's Return.

Received this writ at Columbus, Ohio, on October 21, 1918, and on the same day served same on the within named The City of Columbus, Ohio, a municipal corporation, etc., by delivering a true copy of this writ, with the endorsements thereon, to George J. Karb, Mayor of said City by handing same to him personally at Columbus, Ohio; and on the same day I made further service of said writ on said City of Columbus by delivering a true copy of this writ, with the endorsements thereon, to Milton W. Westlake, Vice Mayor of said City, by handing same to him personally, at Columbus, Ohio.

And on October 21, 1918, I served same on the within named George J. Karb, Mayor of said City of Columbus, Henry L. Scarlett, City Attorney and City Solicitor of said City, James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred Zimpfer, Members of the City Council of said City, by delivering to each a true copy of this writ, with the endorsements thereon, by handing said copy to each personally at Columbus, Ohio.

M. DEVANNEY,
U. S. Marshal, S. D. O.,
By WM. J. LUCKS, *Deputy*,
By J. NORRISH, *Deputy*.

Fees.

12 services	$24.00
12 copies	3.60
1 mile	.06
Total	$27.66

145 *Clerk's Certificate.*

THE UNITED STATES OF AMERICA,
Southern District of Ohio,
Eastern Division, ss:

I, B. E. Dilley, Clerk of the District Court of the United States of America, within and for the District and Division aforesaid, do hereby certify that the foregoing is a true and complete transcript of the proceedings had by and before said Court in the above entitled cause, as the same appears of record and on file in the clerk's office of said Court.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said Court, at the City of Columbus, in said District, this 24" day of October, A. D. 1918.

[Seal United States District Court, Southern Dis. Ohio.]

B. E. DILLEY, *Clerk*,
By C. P. WHITE, JR., *Deputy*.

146 United States Supreme Court.

UNITED STATES OF AMERICA,
Sixth Judicial Circuit, ss:

To The City of Columbus, Ohio, a Municipal Corporation of the State of Ohio; George J. Karb, Mayor of said City; Henry L. Scarlett, City Attorney and City Solicitor of said City; James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred Zimpfer, Members of the City Council of said City, Greeting:

You are hereby cited and admonished to be and appear at a session of the United States Supreme Court to be holden at the City of Washington on the* 13th day of November, next, pursuant to an Appeal, filed in the Clerk's Office of the District Court of the United States for the Southern District of Ohio, wherein The Columbus Railway, Power and Light Company, a corporation of the State of Ohio, is appellant and you are appellees to show cause, if any there be, why the decree rendered against the said appellant as in the said appeal mentioned should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Edward Douglass White, Chief Justice of the United States, this 14th day of October, in the year of our Lord one thousand nine hundred and eighteen, and of the Independence of the United States of America the one hundred and forty-third.

D. C. WESTENHAVER,
United States District Judge.

147 Received this writ at Columbus, Ohio, on October 21, 1918, and on the same day served same on the withinnamed The City of Columbus, Ohio, a municipal corporation, etc., by delivering a true copy of this writ, with the endorsements thereon, to George J. Karb, Mayor of said City by handing same to him personally at Columbus, Ohio; and on the same day I made further service of said writ on said City of Columbus by delivering a true copy of this writ, with the endorsements thereon, to Milton W. Westlake, Vice Mayor of said City, by handing same to him personally, at Columbus, Ohio.

And on October 21, 1918, I served same on the within named George J. Karb, Mayor of said City of Columbus, Henry L. Scarlett, City Attorney and City Solicitor of said City, James J. Thomas, City Clerk of said City, and Milton W. Westlake, Louis A. Alcott, Albert E. Griffin, Joseph C. Nailor, Edgar L. Weinland, Arthur P. Lamneck and Fred Zimpfer, Members of the City Council of said City,

*Not exceeding 30 days from the day of signing.

by delivering to each a true copy of this writ, with the endorsements thereon, by handing said copy to each personally at Columbus, Ohio.

M. DEVANNEY,
U. S. Marshal, S. D. O.,
By WM. J. LUCKS, *Deputy*,
By J. NORRISH, *Deputy*.

Fees.

12 services	$24.00
12 copies	3.60
1 mile	.06
Total	$27.66

[Endorsed:] Marshal's Civil Docket No. 8678. Rec'd Oct. 21/18. Filed Oct. 24, 1918, 2 p. m. B. E. Dilley, Clerk.

Endorsed on cover: File No. 26,801. S. Ohio D. C. U. S. Term No. 715. The Columbus Railway, Power and Light Company, appellant, vs. The City of Columbus, Ohio, et al. Filed October 26th, 1918. File No. 26,801.